Commission File

IN THE MATTER OF The City Act, being Chapter 112 of The Revised Statutes of Alberta, 1955, and Amendments thereto, and

IN THE MATTER OF an Inquiry into certain matters as outlined in a Resolution received from the Council of The City of Edmonton under Section 728 of the said Act.

THE REPORT OF THE HONOURABLE MR. JUSTICE M. M. PORTER

W. G. MORROW, ESQ., Q.C.
Counsel for the Commission.

W. F. ELLIS, ESQ.,
Clerk to the Commission.

Supreme Court Reporters
EDMONTON, ALBERTA

GOVERNMENT OF THE PROVINCE OF ALBERTA

JUDICIAL OFFICES

OUR FILE.....

YOUR FILE.....

The Court House,
Edmonton, Alberta,
20th October 1959.

Provincial Librarian,
Legislative Buildings,
Edmonton, Alberta.

Dear Sir:

On instructions of Mr. Hart of the Attorney General's Department I enclose herewith "The Report of The Honourable Mr. Justice M. M. Porter".

Yours truly,

S. M. Barnett,
Chief Court Reporter.

encl.

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G. S. Docherty, Esq.,
City Clerk,
City of Edmonton.

I have the honour to hand you for presentation to the Council of the City of Edmonton, the report of my inquiry carried out by me under the authority of an order made by the Attorney General of Alberta on the 16th January A.D. 1959, under the provisions of Section 728 of the City Act of Alberta, by which I am directed to report to the Council of the City of Edmonton.

Will you see that the report is brought to the attention of that body.

Yours truly,

Commissioner

To the Honourable

The Attorney General of the Province of Alberta.

I have the honour to hand you herewith the report of an inquiry conducted into and concerning the matters referred to in an order made by you on the 16th January A.D. 1929, under the authority of Section 158 of the City Act of Alberta.

I have the honour to be, Sir,

Your obedient servant,

COMMISSIONER

Chapter 42 of the Revised Statutes of Alberta 1955, and amendments thereto, known as "The City Act", contains:

> "728. (1) If the council passes a resolution
>
> (a) requesting that an inquiry be made into any matter mentioned in the resolution and relating to an alleged malfeasance, breach of trust or other misconduct on the part of a member of the council, a commissioner or other official, an employee or agent of the city,
>
> the Attorney General may appoint a judge or some other suitable person to make the inquiry."

INTRODUCTION

It appears that certain allegations of the type set forth in the above section were made by citizens and considered by the council of the City of Edmonton. The council created a committee drawn from its own members to inquire into these allegations. Witnesses were heard by this Committee but the effort was abandoned and a resolution passed by the council on the 12th of January 1959, in terms as follows:

> "WHEREAS at a meeting of the Council of the City of Edmonton held on the 12th day of January, A.D., 1959, the following Resolution was passed:
>
> 'Pursuant to Section 728 of the City Act, Council does now resolve that the Attorney General of Alberta be requested to appoint a Judge to inquire at the earliest possible

INTRODUCTION

It appears that certain alterations of the City Act were made by citizens who set forth in the above section were made by citizens and considered by the council of the City of Edmonton.

The council created a committee given from the own members to implement these alterations. Although more people by this committee but the effort was abandoned and a resolution passed by the council on the list of January 1951, in terms as follows:

"WHEREAS at a meeting of the council of the City of Edmonton held on the list day of January, A.D., 1951, the following resolution was passed:

"Pursuant to Section 558 of the City Act, council does now resolve that the Assessor General of Alberta be requested to obtain a legal opinion as to whether the existing bonaipla some other multiple bylaw to make the industry."

Resolution

(a) Requesting that an industry be made into new market mentioned in the resolution and letting to an illegal maintenance' placed of first of other mismanagement be the body of a member of the council, a commissioner or other official, an employee or agent of the city;

" 'date concerning the matters enumerated in the report to the Edmonton City Council, dated January 12th, 1959, as submitted by the Special Investigating Committee appointed by City Council pursuant to Section 730 of the City Act on December 8th, 1958.';

and

WHEREAS the matters enumerated in the report to the Edmonton City Council dated the 12th day of January, A.D., 1959, as submitted by the Special Investigating Committee appointed by City Council pursuant to section 730 of The City Act are as follows:

(a) That certain employees and officials of the City of Edmonton have accepted or solicited bribes in the course of their employment and in connection with the discharge of their duties as employees and officials of the City of Edmonton.

(b) That there has been improper policy, administration and handling of lands owned by the City of Edmonton and the sale and purchase of said lands, in support of which the following examples are cited:

(1) Lots 274, 275, Block 9, Plan 1558 K.S.

(2) The Hannigan property, Lot 12, Block 38, Plan 4128 H.W.

(3) Lots 32 to 39 sold to Glenora Tennis Club.

(4) Lots 1 to 7, Lots 18, 19 and 20, Block 5, Plan 5435 V. purchased by the City.

(5) Lot 6, Block B, Plan 1641 E.T.

(6) Lot A, Block B, Plan 4051 K.S.

(7) Parcel 1, Block X, Boulevard Heights, Plan 6903 A.P. (annexation) or parts thereof.

(1) Parcel 1, Block 2, Bonnieville
Estates, Plan 6808 A.E. (annexation) or better (land).

(6) Lot 4, Block B, Plan 7821 K.S.

(5) Lot 6, Block B, Plan 1641 E.T.

(4) Lots 1 to 7, Lots 18, 19 and 20,
Block 2, Plan 5432 A. Bartchpeed
by the City.

(3) Lots 35 to 39 sold to Clemente
Temple Club.

(2) The Hamburgen Property, Lot 13,
Block 38, Plan 4138 H.W.

(1) Lots 314, 315, Block 6, Plan
1558 K.S.

and circed:
support-of which the following examples are
made and purchase of said lands, to
owned by the City, or Edmonton and-the
administration and handling of lands
(b) That there has been improper policy,

and officials of the City of Edmonton.
the discharge of their duties as employees
their employment and in connection with
or solicited things in the course of
of the City of Edmonton may accepted
(a) That certain employees and officials

City Act are as follows:
by City Council pursuant to section 130 of the
by the Special Investigating Committee appointed
Report to the Edmonton City Council dated the
1st day of January, A.D., 1959, as amended

WHEREAS the matters enumerated in the

" ;dated concerning the matters enumerated
in the report to the Edmonton City
Council, dated January 1st, 1959, as
amended by the Special Investigating
Committee appointed by City Council
pursuant to section 130 of the City Act
on December 8th, 1958.;

and

"(c) The improper handling and administration of town planning.

(d) Excessive cost and improper purchasing, leasing and rentals of equipment and material by the City of Edmonton."

By an Order signed on the 16th of January, 1959, the Attorney General of Alberta, acting under the provisions of Section 728 aforesaid, appointed The Honourable Mr. Justice Marshall M. Porter, a Justice of Appeal of the Supreme Court of the Province of Alberta, to make an inquiry into and concerning the matters referred to in the aforesaid report by the city council of Edmonton.

Acting under the authority conferred by Section 728 of The City Act, the Commissioner undertook the inquiry directed.

Mr. W. G. Morrow, Q.C., of Edmonton, was appointed as counsel for the Commission. Other counsel appeared representing various interested parties and reference is made at the foot of this report to these counsel and to the several parties in whose interest they appeared.

The subjects of the inquiry had been brought to the attention of the city council by a Petition purporting to be signed by some five hundred ratepayers of the City of Edmonton. They were represented by Mr. F. R. Dunne throughout the proceedings.

A notice was inserted in the Edmonton Journal, the Edmonton News and the Edmonton Sun advising that an

inquiry would be held and inviting citizens or associations of citizens interested in the matters under review to make such representations as to them seemed proper.

Mr. W. F. Ellis was appointed as secretary to the Commission.

Sittings of the Commission were opened in the City of Edmonton on the 9th day of March 1959, and concluded on the 25th day of May 1959. In that interval, the Commission heard testimony on twenty-one days. Seventy-one witnesses gave evidence. In all, the record of the proceedings embraces 2,558 pages of evidence and 348 exhibits filed.

The Commission counsel called each witness who gave evidence, and examined him in chief on the statements which the witness desired to make. Each witness was then cross-examined by counsel for other parties who were interested in his testimony. There was a final examination by Mr. Morrow representing the Commission.

Notwithstanding that some of the allegations had been the subject of inquiry by a committee of council, the Commission began afresh and reheard the witnesses that had appeared before the council. The Commission heard the evidence of W. R. Brown, an employee in the service of the city in charge of town planning administration; Mr. Norman A. Rault, the head of the city land department; Mr. Louis David Hyndman, Q.C., the chairman of the Interim Development Appeal Board set up under Edmonton's town planning by-law; and Mr. Dudley Blair Menzies, one of the Commissioners of

the City of Edmonton. Their testimony dealt with administrative procedures and practices with respect to town planning and land sales. Mr. Menzies supplied maps of the various land and planning programs in the City of Edmonton.

DIXIE BOY DRIVE-IN
and
CITY CENTRE MOTEL

Evidence was then led with respect to transactions involving Lots 274, 275, Block 9, Plan 4733 K.S., which property lies at the southeastern end of the airport and is now occupied by the Dixie Boy Drive-In and the City Centre Motel.

The area belonged to the City of Edmonton and was zoned under the 1933 by-law for housing. Sale was withheld by the city pending some consideration of a traffic development that conceivably would require the use of some of these lands. While these considerations were being studied, inquiring buyers were told by the planning department that the land was "frozen", and, in some instances, were told that it would not be up for sale so long as the airport continued to function at its present location. The planners later abandoned the idea of making a traffic arrangement involving the use of this land and the council then decided to pave a street known as Princess Elizabeth Street. These two decisions gave some permanence to the future prospects for this area and the considerations which had kept the matter in suspense now changed to enable some

consideration of the use to which the area could be put.

Significantly, no record seems to have been kept by the land or planning departments of the inquiries of potential buyers and no effort was made by the city to find any person who had been interested in buying this property. Thus, Mr. Charles E. Walsh, who in the spring of 1957 inquired about the possibility of purchasing this property was not informed about the change with respect to its sale though he had been told that "as long as the airport was there . . . that land would not be for sale." And so with others.

In the fall of 1957, one Nick Zukiwski, a building contractor who claimed to have been interested in motel properties, had discussions with Mayor William Hawrelak about the prospect of buying this area. At the outset it was intimated to him that the prospect of it being sold by the city was remote but as time went on, Mr. Zukiwski was encouraged to believe that it could be made available. The matter was discussed between the Mayor and Commissioner Dudley B. Menzies and they came to the conclusion that the property could be sold subject to restrictions appropriate to protect the fly-way to and from the Edmonton airfield.

Rault, the head of the land department, was made aware of this change in the status of the property but he took no steps to so inform his staff, with the result that any purchasers inquiring from the city land department between the fall of 1957 and the middle of April 1958 would

be advised that this land was not for sale.

At this stage, one Alexander J. Laing had been endeavoring to find a location for a drive-in restaurant or a trailer court. He had made several applications to the city for different areas but, for one reason or another, was refused in each case to the point where Commissioner Menzies began to feel that there was some justification for Mr. Laing's feeling that he could not get on with City Hall.

Nick Zukiwski was carrying on business as the Globe Construction Company Ltd., and that company's interest in the property was communicated to Commissioner Menzies by the Mayor. Commissioner Menzies was of the opinion that this area, if it was to be used, might be an appropriate setting for a drive-in restaurant, and in view of Laing's disappointing experiences with the city theretofore, the Commissioner spoke to the Mayor about the possibility of selling part of the land to Laing if Globe Construction did not want it all. The Mayor communicated with Mr. Zukiwski who advised that Globe Construction would not require the whole of the area.

In April of 1958, the Mayor and the Commissioners made a report to council recommending the sale of part of this property to Globe Construction Limited and the remainder to Laing, upon which the council did rely. A motion was made and lost to have the property valued but one wonders what would have been the course of events if the council had been aware of the latent Shandro interest. Council was also led to believe that the area had been zoned

for a motel and that a drive-in was compatible with that zoning. This was due to a mistake on the part of Mr. William R. Brown, the town planner, who relied on the coloring of a map showing zoning done by a subordinate evidently without supervision, and did not trouble himself to resort to the proper records to ascertain the real zoning of the area. The effect of these omissions was,of course, that council gave no consideration to zoning and therefore no notice to the public, any one of whom could have been interested in this property and prepared to bid for it. A price was fixed which, from the evidence, obviously did not take into consideration the change in value that must have occurred after the sales to which the price in this case was related, and this property was sold for a price of $10,000 an acre or about 25¢ per square foot, in circumstances where no competing bid was sought and no knowledge of its availability was given though all interested prospective buyers had been told previously it could not be purchased. Council approved the sale but obviously without being acquainted with all the facts.

Laing completed his purchase and built his drive-in notwithstanding that from the moment of the publication in the local newspapers of the fact of his purchase he was offered very large profits if he would resell to willing buyers.

A very different course resulted in the Zukiwski purchase. Zukiwski was unaware that he had

purchased the property. He was first advised of the fact by one of his employees who had seen it in the paper. Zukiwski did not know the price nor had he indeed ever made an offer at a price. He had done no more than intimate he was willing to buy the land. Zukiwski is not clear but he admits that within two days of the city agreeing to sell the land to him, the Mayor's brother-in-law Paul Shandro, whom he knew, called on him and stated he wanted to acquire the property. There can be no doubt that in the light of this property's location, the development of its environment, and the history of the Laing property, the land was certainly saleable for substantially more than Globe Construction had agreed to pay for it. Mr. Zukiwski made no effort to realize any such gain from the property, he abandoned his idea of building a motel for himself, and instead assigned his agreement to purchase to the Mayor's brother-in-law and signed a contract to build a motel for him. This contract was prepared by a lawyer who, though paid by Paul Shandro, took instructions of both of the parties. This contract contains no clause under which Zukiwski, the builder, could conceivably make a profit and requires him, if strictly construed, to carry out the job at a labor cost equivalent to the average in Edmonton, which must almost inevitably saddle him with a loss. It is noteworthy that this agreement was signed on the 22nd of April, before the formal contract between Globe Construction and the city had been signed, and to Zukiwski's knowledge, in breach of the restraint of

resale, a clause standard in all of the city's land contracts. And this in the face of calls from prospective buyers with whom he did not bother to talk. True, after this investigation was under way, Mr. Zukiwski testified that he was to have 10% on cost of construction as his fee but it is difficult to reconcile this testimony with the omission of such a provision from the written agreement.

The Mayor in his evidence declared that he had no interest in the property and had no knowledge that Paul Shandro had any interest in acquiring the property. The Mayor's statement that he was unaware of Shandro's interest in acquiring the property I find difficult to understand. In the fall of 1957 the Mayor says that Paul Shandro was looking for a motel site and the Mayor bought land on the Calgary Trail in circumstances set out later in this report for that purpose for Shandro's use. It is inconceivable that knowing of Paul Shandro's interest in a motel site the Mayor would not have known of Shandro's interest in the city lands at the airport and indeed have told Shandro about what was happening to make it available for a motel. He acknowledges that once Paul Shandro had acquired it, he had helped him finance it by lending very substantial sums of money to Paul Shandro's company, City Centre Motel, which he claims have since been repaid.

Paul Shandro owned a farm northeast of Edmonton which he sold on the 11th April 1958, three days before Zukiwski bought the City Centre Motelland from the

city. The buyer of this farm testified that in the course of the negotiations for it, Paul Shandro had explained to him that the reason for selling the farm was that through the efforts of his brother-in-law, Mayor Hawrelak, he was going to be able to obtain this very site located near the A.M.A. This evidence by the purchaser was supported by the sworn testimony of his wife and was, in my judgment, unshaken by an exhaustive cross-examination by counsel for Paul Shandro.

During the interval between the city's offer of sale to Zukiwski and the signing of the formal agreement by the city, the Mayor admits that he became aware of the interest of his brother-in-law in the property and admits that he did not disclose the existence of that interest to the other two Commissioners.

It is significant that neither the town planning or the land departments nor the Mayor took any steps to ascertain the interest of other potential buyers in this piece of land located in a growing and central location in the prospering City of Edmonton. Evidence of the interest of prospective purchasers makes it clear that the Mayor must have known of a demand for this property which could very well have affected its price.

This Commission is entitled to inform itself by means other than those available under the ordinary rules of evidence. I would not be prepared, however, to found a conclusion on evidence that includes testimony which would

not be available within the limits of the rules of evidence. The evidence given by the purchasers of the Shandro farm is, of course, evidence that would not be admissible as against the Mayor in these proceedings although it may be in others. I have deliberately refrained from reviewing or weighing the evidence on this subject in this report or making any finding thereon as it raises questions beyond the scope of this inquiry. Any such review might embarrass another tribunal in the future consideration of the questions the evidence raises. The evidence in this matter should be brought to the attention of the Attorney General for such action, if any, as he may deem it his duty to take.

I find, however, that there was improper handling of lands owned by the city as alleged by the Petitioners. I expressly absolve Commissioner Menzies from this finding.

GLENORA SKATING
CLUB PROPERTY

In 1925 the Glenora Skating and Tennis Club purchased property on 120th Street from private owners and subsequently erected facilities for skating and tennis. This property was forfeited to the city in the year 1937 for taxes, amounting then to nearly $6,000.00. The club leased the premises from the city from 1938 to 1948 at a rental which was approximately half the annual taxes. This was a practice followed by the city in dealing with athletic clubs, curling clubs and the like. This arrangement was approved by council. In 1948 the club approached the city with a view to recovering the ownership of the property. An agreement was made by which the club was entitled to buy back the property for half of the then assessment but the agreement reserved to the city the right to recover the lots if the club did not use them or desired to dispose of them for other purposes. This right the city protected by a caveat. This too was a decision of council. The club did not carry out the building requirements contained in this agreement. In October 1956, the club made written representations to the city explaining that it was necessary if the club was to prosper to spend a substantial sum of money on improving the facilities and the city was requested to remove its caveat as it stood in the way of raising money on the security of the property. Negotiations continued resulting finally in an agreement by which the club bought back the

property from the city. The agreement contained a provision that the city should have the right to repurchase the lots by matching the amount of any firm offer obtained by the club from any prospective purchaser. An agreement was drafted on the 3rd of June 1958, making a formal record of this understanding. It was also a condition of the sale that if the club disposed of the land, the club would reinvest the proceeds from the sale for the purpose of providing similar or better facilities for its purposes at some other suitable location.

The club did receive offers for the property and communicated that fact and the amounts of the offers and the names of the prospective purchasers to the city in a letter dated the 1st of October 1958. On October the 20th, the city replied to the club declaring that it did not wish to exercise its right to repurchase the lots. This was the unanimous decision of the Commissioners. There is no suggestion that anyone obtained any advantage. The decision was a policy decision reflecting the practice of the city in aiding clubs of this sort whose activities contributed to the well-being of the citizens of Edmonton. The club did sell the property and has the proceeds in a trust account and a committee of the club is now engaged in endeavoring to arrange capital for the purpose of providing a larger clubhouse and facilities at another location. The club is seeking the support of the citizens of Edmonton to whom invitations for membership have been sent to a number in

excess of five thousand.

These negotiations were conducted openly, public disclosure was made, no advantage accrued to any official of the city, the covenants in the agreement have been kept by the parties to it, the transaction was approved and confirmed by council with full knowledge and in keeping with the well-defined, long-time policy by which the city has extended like benefits to other associations of citizens over a long period of time. The transaction results from a free vote of an informed council elected by the citizens of Edmonton and cannot therefore be described as reflecting improper policy, administration and handling of lands owned by the city as alleged by the Petitioners.

HANNIGAN'S
DRIVE-IN

The next item that falls for consideration is described in the terms of reference under the heading (b)(2) as the Hannigan property, Lot 12, Block 38, Plan 4128 H.W.

This property was leased to Hannigan Enterprises Limited in 1953 by the City of Edmonton. Considerable interest was exhibited in this property by others with a view to building a hotel upon it. Its proximity to the airport imposed some caution on the city authorities in considering the use to which it ought to be put. The Zoning Appeal Board decided in 1956 that it was suitable for the construction of three-storey business premises. In the light of this change in possible use, the Hannigan brothers became interested in acquiring it. Petitions had been circulated opposing and approving its development as a hotel site and the Hannigans themselves circulated a petition enlisting support to have it developed as a drive-in restaurant.

The city was concerned about the development of the property because it had to provide a point at which its buses could be turned around and also to protect an underground electric cable easement. A subway was under study also. With these considerations in mind and anticipating parking difficulties, Commissioner Menzies was of opinion that this location was not a proper site for a hotel site.

The Hannigans' application to purchase was considered by the civic authorities and approved by the council resulting in an agreement between the city and Hannigan Enterprises Limited on the 6th February 1958, by which that company acquired the property for the purpose of erecting thereon a drive-in restaurant.

All of the interested parties were heard and the position of the civic authorities was fully stated by Commissioner Menzies. There is no evidence to indicate that there was any irregularity whatever in this transaction. There is no suggestion that any civic official profited nor is there any evidence that the council, in making its decision, was uninformed of any relevant fact. The Petitioners' allegation that there was improper policy, administration and handling of lands owned by the city as it relates to this property must fail.

THE BRAIDS

The next item is described in the terms of reference as (b)(5) and (b)(6) - Lot 6, Block B, Plan 1641 E.T. and Lot A, Block B, Plan 4051 K.S., designated for convenience as The Braids.

Contemplating some replot development in the Belvedere subdivision, it became apparent to Commissioner Menzies that the city would require more land than it had available for the purpose of providing for schools and park.

To accommodate these future needs, the city purchased a parcel of fifteen acres in that subdivision for $30,000.

A citizen by the name of Marie Janne was operating a greenhouse on the north side of 88th Avenue between 87th and 89th Streets in circumstances which made it an objectionable, non-conforming structure in that area. The city arranged to trade a part of its fifteen acres and a house located thereon with her for her property on which the greenhouse was located, each of the parties agreeing to a valuation of $9,800 for the respective parcels. James H. Ogilvie, Q.C., a solicitor, had taken security for a debt on the 88th Avenue property from Marie Janne and the payments had fallen badly in arrears. When the proposed exchange of property with the city was formulated, he was approached by Marie Janne for his consent. In order to liquidate her debt, Marie Janne agreed with Mr. Ogilvie to convey to him a part of the land she was getting from the city. She retained a part to which the house was moved. The transaction appears to have been a normal business deal in which the parties dealt at arm's length and to their mutual satisfaction.

Mr. Ogilvie then made an arrangement to sell the property he had so acquired to the Imperial Oil Company, and in due course, an application was made to the Interim Development Appeal Board on Mr. Ogilvie's behalf for approval of his property as a service station site. This approval was given.

In the result, Mrs. Janne paid her debt, acquired a new property with a house upon it; Mr. Ogilvie acquired the parcel which he disposed of to the Imperial Oil Company and the city retained 14.3 acres in the Belvedere area, which land is still available to serve the original purposes for which it was bought. These transactions were fully disclosed to council. No official of the city made any personal gain. Commissioner Menzies is to be commended for his foresight on the city's behalf. The charge by the Petitioners that there was improper policy, administration and handling of this parcel of land by the City of Edmonton therefore fails.

OLD ST. MARY'S HOME

The next item for consideration is item (b)(4) in the terms of reference which has been referred to throughout the testimony as the Old St. Mary's Home. For years this property was operated by the Sisters of Charity of Providence, General Hospital, as a boys' home.

On two occasions they had offers to purchase this property from persons who desired to put it to particular uses. In both instances, the new use involved rezoning and the applications to rezone were rejected.

A company contemplating the construction and sale of boats bought the property from the owners and applied to have it rezoned for its use. The zoning was

authorized. The venture failed.

One of the participants in the promotion of the boat company was Boyce Green, then a member of the Interim Development Appeal Board, who presided as chairman on the occasion on which this change of zoning was considered by that board. He did not disclose to that board his interest in the company which at that time was in the form of a loan to the company. When the company failed, Mr. Green took a conveyance of this property in his own name, no doubt by arrangement with the company. He then went to Mr. Fulton X. Frederickson, an assistant zoning officer, to ascertain whether the property could be used or rezoned for a meat processing plant. Mr. Frederickson apparently consulted Mr. Brown who gave it as his opinion that zoning for a boat factory was not different from zoning for a meat packing plant and authorized Frederickson to advise Green that the existing zoning was appropriate to enable persons to whom Green had sold the property to carry on a meat packing business on the premises. Mr. Green in the process disposed of the property at a profit which no doubt arose from the permission of the zoning officers for its new use, which in turn was based on the Appeal Board's permission for a boat factory. The meat packers, in good faith, commenced their operations and provoked a protest from the neighbors that was sufficiently effective to alarm Mr. Frederickson into taking steps of doubtful validity to put a stop to the

meat packing operations. Thereupon the Interim Development Appeal Board promptly rescinded the zoning authority. Commissioner Tweddle then intervened in the matter and was able to arrange a settlement of the meat packers' claim against the city by paying them a sum of money and taking over the property. The settlement was designed to compensate the meat packers for the loss they had suffered by reason of the interruption of the right of enjoyment which they had bought from Green with the approval of Frederickson and Brown.

Here we have Frederickson, a city official, usurping the functions of the Interim Development Appeal Board with the result that the change in use was accomplished without notice to people who were affected by it. Frederickson posted on the property a "Stop Work" order for which there was no conceivable authority in the planning department. Nevertheless, as is so often the case, this hollow show of authority led the meat packers to stop.

These irregularties combined to involve the city in a substantial loss. Mr. Green came out of the transaction with a profit which could not have been made but for the rezoning by the Interim Development Appeal Board over which he presided as acting chairman. While it is true he did not vote, he obviously sat as a judge in his own cause, conduct which, it is hardly necessary to say, is reprehensible.

The Petitioners' allegation that there was improper policy, administration and handling of these lands is well founded.

BOULEVARD HEIGHTS

Evidence was next led on the subject of Boulevard Heights which appears in item (7), paragraph (b) of the terms of reference.

This property lies on the east side of the city and was part of the Municipality of Strathcona until it was annexed to the City of Edmonton, on the 1st of January 1959. It had been subdivided in 1913 and was known over the years by various names and owned by various people. In April of 1953, this parcel was acquired by Mr. David S. Gray, who then became the registered owner. He represented a syndicate which had acquired other properties in or adjacent to the City of Edmonton and was engaged in promoting and building shopping centres. One of these was located in the eastern portion of the city about a mile and a half from the Boulevard Heights parcel. Boulevard Heights had been acquired by him as a possible site for a shopping centre, depending on the extent and direction of the city's development. In view of the syndicate's ultimate decision to build at Bonnie Doon, Boulevard Heights became property that was surplus to its needs. The syndicate was willing to sell it. All agree that the area was one of prospective development

likely to enhance in value materially whenever brought into the city. Requests had been made by the owners of the areas adjacent to Boulevard Heights to be annexed to the city but the city delayed in taking in the area because of the difficulty of providing for sewage disposal. This problem was met by the construction of a tunnel sewer to serve a large part of the eastern part of the city and areas adjacent beyond the city, leading to a disposal plant located on the river. The Provincial Board of Health had ordered the construction of such a sewer about 1954 requiring the work to be done by an agreed date. The actual contract was let in 1957 but Commissioner Menzies states that was a lag of about one year. With sewer construction underway, the city authorities turned their attention to the prospect of annexing and developing the Boulevard Heights and some area adjacent to it. Paper studies of the area were made and tentative plans drawn. By the summer of 1956 these plans had reached concrete form and showed the nature of the development and the location of arterial highways and streets.

In 1955 and after, one Jean F. Carroll came into Edmonton on behalf of Dominion Stores to make a study of possible locations for outlets for his company. Carroll saw the Mayor and the town planning department and was given access to the plans they had prepared for this and other areas. Carroll determined that it would be wise for his company to acquire a site in Boulevard Heights at the

junction of the planned arterial throughway. Melton, a real estate agent, advised the city of such an interest on behalf of his client, Dominion Stores. Carroll advised Mayor Hawrelak of his interest in acquiring a parcel of this property for the location of a store and, in the course of one of those discussions, he was advised by the Mayor that Boulevard Heights belonged to Dr. William A. Shandro, a brother-in-law of the Mayor, although Mr. Carroll says that that fact was unknown to him at that time. As shown by Exhibit 53, the town planning department had by that time determined that it would have a traffic interchange at the intersection of Highway 16 and 50th in Boulevard Heights and this fact must have been known to the Mayor. On the 22nd of October, 1956, with Mr. Carroll's authority, the manager of his company's real estate department, wrote a letter to Dr. Shandro advising:

> "In principle, our Company is prepared to purchase eight acres of land from you at a price of $8,500.00 an acre to be paid in January 1959. . . It would be in the best interest of both yourself and our Company to have a reasonably accurate description so that there will be no misunderstanding in the future."

At the same time Dominion Stores sent a letter to their solicitors advising that they had given a letter of intent to purchase property vaguely described. That letter then said:

> "Would you be good enough to get in touch with Mr. Hawrelak and obtain for us the best possible description for the property in question.
>
> In setting out the description it would be appreciated if you could include adjacent streets so that we can locate the property on the map of the City."

This information was sought for the purpose of enabling Dominion Stores to make a firm proposal.

Subsequently, Mr. Carroll called Mr. Hawrelak on the telephone from Toronto, and finding that the Mayor was contemplating a visit to Toronto, he asked him to bring a plan which the Mayor had shown to Mr.Carroll in his office here earlier. The Mayor was in Toronto for the Grey Cup game which was played that year on the 24th November and saw Mr. Carroll, who according to the Mayor's testimony, told him that Dominion Stores was reconsidering its land policy in view of the money situation. However, while the Mayor was in Toronto he was advised by Mr. Carroll that the matter of acquiring a site in Boulevard Heights had been considered by the President's planning committee and they had determined to purchase six acres at $7,500 an acre. As will appear later, the Mayor was a half owner in Boulevard Heights with Dr. Shandro at this very time and this transaction with Dominion Stores was for the purchase of a parcel in which he had a half interest.

On the 30th of November, Carroll wrote a letter to the Mayor which, curiously, was not mailed to the

Mayor's office but was mailed to the Mayor's residence. In that letter he confirmed a telephone conversation in which he advised the Mayor that Dominion Stores had determined to purchase six acres on Highway 16 at approximately 67th Street in Edmonton. In this letter he advised:

> "If it is necessary we can pay cash for the deal but we would prefer to pay $10,000 now with the balance to be paid April 1st, 1957." (No interest).

This would appear to be a most unusual clause to be present in a letter to the Mayor of a city, if we are to believe the evidence that he had not disclosed his interest in the property to Mr. Carroll. Lacking any interest, it is difficult to see why Carroll was discussing time of payment with the Mayor.

The letter proceeded:

> "I do not see how we can make a specific offer to Dr. Shandro beyond the statement contained in this letter until such time as he is in a position to give us a description of the property. . . Will have to leave this thing in your hands to push the matter forward but we are instructing Mr. Kennedy of Cormie and Kennedy to work with you to bring the matter to a head.
>
> "It is our understanding that at point A as indicated on the attached sketch, space will be reserved for a filling station and this will not be part of our property. Area B will be the shopping centre <u>and this is what we are buying</u>. Area C is to be made into a park.
>
> "Attached is the drawing covering this area which you left with me."

That drawing is Exhibit 53 which is appended to this report. It is to be observed this plan shows that the six acres that were being purchased faced upon one of the main arteries passing through this intersection. Notwithstanding later changes made in the design of the intersection the six acres were left on the arterial highway and appropriate for a shopping centre till June 1957.

At this stage of affairs, Mr. Menzies decided that the city would not have a traffic interchange at this intersection in Boulevard Heights because it would take up tod much land. He substituted a traffic circle. Mr. Carroll does not seem to have been concerned with this change nor, indeed, with any other that might make that area less desirable or not available as an appropriate site for a shopping centre because he says, "We understood we would be able to trade land and get the shopping centre", even if the City had to buy the land zoned for shopping to trade with Dominion Stores. In other words, Mr. Carroll claims to have had a deal, not for a specific six acres delineated by metes and bounds, but for an area zoned for shopping centre in the final plans on the arterial intersection in Boulevard Heights.

On the 26th May 1956, the solicitors for Dominion Stores returned to the City of Edmonton for the attention of Mr. William G. Hardcastle, a member of the town planning staff, a request for annexation and consent to development with the sketch plan attached, which, it would appear, had been previously sent by the City of Edmonton to

Dominion Stores or their representative. This plan, which is Exhibit 53, showed a traffic circle and an area zoned for a proposed supermarket site served on three sides by roads. It also disclosed that the six acres belonging to Dominion Stores described by metes and bounds was across the road from the area zoned for shopping and shown as residential. Nevertheless, Dominion Stores stated it was prepared to agree to the annexation provided the following conditions were complied with, one of which was:

> "(3) That there will be no additional monies required to be paid to the City of Edmonton <u>on exchange</u> of the property",

and

> "(1) That there would be no sewage or water lines or other utilities crossing the property which may have to be relocated or easements may be reserved on a completion of the transaction",

and

> "(2) That there will be no restriction covering the time at which building is to commence on the property."

and Mr. Carroll explained that the exchange of property referred to in paragraph (3) referred to the exchange of the six acres located as residential property on the south side to the newly located shopping centre shown on the plan. This letter contained the following statement:

> "On the conditions outlined above, we are enclosing the duly completed forms and plan as stated."

On August 28th, 1957, Dominion Stores wrote a letter to Mr. Hardcastle in the town planning department in

which they say:

> "With respect to the above property purchased some time ago by Dominion Stores Limited" (the above property being the six acres bought from Shandro) "it was understood verbally that the property purchased may have to be exchanged for other property fronting on the proposed highway due to the variations of the replot scheme for the area."

This letter came to the attention of Mr. Menzies who advised Dominion Stores that it was too early to make any commitments with respect to this property as the city did not have it, but when the area was annexed every effort would be made to protect the interest of Dominion Stores and the matter would be the subject of discussion.

That there was to be such a right of exchange is clearly stated by Mr. Carroll and described by Mr. Shaw as being of importance to Mr. Carroll because "he has to make recommendations to management based on those plans and he has to convince management that he is close to, on the main artery, or that he certainly has hopes of getting there."

If there was any such understanding as Mr. Carroll says, it must have been made with Mayor Hawrelak. So far as the record goes the matter seems to stand now in suspense because, as appears from a letter from the solicitors for Dominion Stores dated 4th March 1959, the original intention of effecting a direct exchange with the City of Edmonton for commercial property in the centre of the main

arterial highway cannot be completed as such due to the present inquiries made into the city's administration with particular reference to the exchange of city lands. If in fact there was no arrangement for an exchange of this six acres for a site for a shopping centre appropriate to the needs of Dominion Stores, it is difficult to understand why they should have paid $7,500 an acre for an area more than adequate for their needs in a piece of land then priced at $2,000 to Dr.Shandro and sold, after annexation was underway, for $4,000 an acre for residential property.

The evidence with respect to the acquisition and disposal of this property by Dr. Shandro now falls for examination. The dominant member of the syndicate which held the land in Gray's name was a gentleman named Clarence Palitz, with whom Dr. Shandro became acquainted prior to 1953 in a professional capacity. There developed an acquaintanceship which led to their meeting socially in New York. There, on Dr. Shandro's testimony, Mr. Palitz, in reply to a request for advice, told Shandro that land was a good speculative asset for a medical man and indicated that the Boulevard Heights property would be a good venture for a long-hold at $2,000 an acre. This discussion did not crystallize in any transaction until much later. It is obvious that this land would enjoy its greatest increment upon its annexation to the City of Edmonton and it is clear from the evidence that that depended on the time at which the tunnel sewer would be ready to serve it. It is conceded that Dr. Shandro discussed this property and its prospects

from time to time with Mayor Hawrelak who by the very nature of his office was intimately familiar with all those things essential to be considered and determined as conditions precedent to annexation and consequent increment of value.

When Mr. Carroll decided in the late summer of 1956 that his company ought to have property on which to build an outlet in Boulevard Heights, it is clear that he was fully advised of the crystallizing program for development by the town planning department and had discussed the area's potential development with the Mayor. Indeed it was about that time that the Mayor advised him that Dr. Shandro was the owner. At that time, though, Dr. Shandro had no more than an understanding that he would be able to buy the area. He had no binding obligation to take the property and did not affirm one until its terms were finally settled in an instrument signed on 15th November 1956. As a result of these discussions with the Mayor, Mr. Melton, Mr. Carroll's agent, got in touch with Dr. Shandro. It is significant that the acquisition of the property by Shandro from Gray and the sale of part of it to Dominion Stores ran side by side throughout. Dr. Shandro bought the property for $2,000 an acre, $5,000 down with a subsequent payment secured by a mortgage. He says he was disturbed about undertaking an obligation of more than $160,000 and he consulted his solicitor, Mr. Arnold F. Moir, who advised him that although he had promised to pay more than $160,000 he could not be made by law to pay any money but would be liable only

to lose the payments he made from time to time if the land could not be sold for more than he owed. It is therefore clear that Dr. Shandro knew on the 15th November that he did not have a liability for $160,000 but his risk could not exceed the amount he had from time to time paid in under the contract, which on the 15th of November was as little as $5,000. Before the 15th November 1956, he had the letter of intent from Dominion Stores with respect to the purchase of eight acres at $8,500 an acre or $68,000. So that he knew when he signed the mortgage for $160,000 on the 15th November 1956 he could only lose $5,000 and had the prospect of getting from Dominion a little more than enough money to meet the next payment on the mortgage. It is perhaps just a coincidence that the oncoming payment on the mortgage from Shandro to Gray is a little less than Shandro would get from Dominion Stores under its letter of intent.

Dr. Shandro's acquisition of the property from Mr. Gray had not been unconditional. Gray's syndicate owned Bonnie Doon. It was but a mile and a half from Boulevard Heights. There was the danger of a new buyer building a shopping centre in Boulevard Heights which would materially affect the value of Bonnie Doon shopping centre. When, therefore, Gray's syndicate decided to sell the land to Shandro for $2,000 an acre, they sought a covenant binding the purchaser to refrain from building anything in Boulevard Heights of a size and nature that might be competitive with Bonnie Doon. Mr. Gray's solicitor, Mr. Stanley H. McCuaig,

Q.C., advised Mr. Gray that such a covenant was not an effectual way of providing such a restraint and consulted the syndicate's lawyers in New York. It was finally resolved that the most effective way in which to give this property protection against such a contingency was to procure from the town planning authorities of the City of Edmonton a letter which may be described as a declaration of intent by the city that it would not permit in the zoning of Boulevard Heights provision for a site for a shopping centre. Gray concedes that this was not enforceable legally but he believed it would be a moral obligation which would so embarrass anyone who sought its breach as to prevent the prospect of such a development. It is clear that if the letter did not serve that purpose, it served no purpose. That must have been apparent to town planner Brown when he signed it. Indeed, whatever consideration he gave the matter when he signed the first letter, its importance and its use must have been apparent to him when he signed the revised copy which Gray took to him after Gray's lawyer in New York changed the language of Brown's first letter. If this letter was given voluntarily by Brown, it is a shocking misuse of his power and discloses a complete misunderstanding of his functions because such a letter effectively creates a monopoly for a consideration passing to someone other than the city. It is as if when the Hudson's Bay Company was built in Edmonton in 1929 or 1930, the then town planner had said to the Hudson's Bay Company that he would not allow

Eaton's to come into downtown Edmonton in the foreseeable future. While Mr. Brown protests that he gave this letter without consulting anyone, it is significant that on the 10th of October, a copy of it was sent to the Mayor, and after discussion of its contents with Mr. Brown, it was allowed to stand. Significantly, Dr. Shandro refused to get such a letter himself although its delivery was a condition precedent to his right to purchase. Mr. Gray, the vendor, undertook the effort himself, although strangely enough, he, Gray, insisted on the covenant which Shandro signed with the Mayor's approval. Gray having received this letter which complied to his satisfaction with the condition in the mortgage, the papers were made ready for signature. The Mayor testifies that Dr. Shandro went out of town and asked him on Shandro's behalf to ascertain from Gray's solicitor the cause of the delay in concluding these agreements and the papers were delivered for the Mayor on November 8th. The Mayor by the very examination of the mortgage must then have realized the purpose for which Brown's letter had been given and that its use was a condition of the acquisition of the property by Dr. Shandro. Finding the papers in proper form, he so advised Dr. Shandro who signed them on the 15th, having in the meantime been fully informed by his solicitor Mr. Moir about the meaning of the documents and the significance of the obligations which Dr. Shandro was undertaking.

The Mayor insists that he obtained his interest in the property in the evening of the 15th of November. His cheque indicates that he paid for his interest that night. It is the Mayor's testimony that over the whole of the period prior to that time, he had no interest in the property. According to his evidence he became a reluctant participant in this venture because of his brother-in-law's fear of the very large obligation that he had undertaken in view of his responsibilities to a large family. The Mayor's explanation is wholly unsatisfactory in view of the knowledge he had that that obligation did not at that time involve a loss of more than $2,500 each for himself and Shandro, the imminence of the tunnel sewer and annexation and the assurance of Dominion Stores that it would take eight acres and give its covenant to pay more, but significantly, only slightly more than the oncoming payment on the mortgage to Gray.

However, having paid for this interest, the Mayor continued the discussions with Dominion Stores through a visit at Grey Cup time as outlined above.

It is useful to examine the price development of this area. It was bought for $2,000 an acre on terms. All but this six acres which Dominion Stores bought was sold after the development had crystallized so that a buyer could determine its use and sale value, for $4,000 an acre. At a time when there was doubt about the form of the development, Dominion Stores paid the Mayor and Shandro $45,000 for a six

acre parcel described by metes and bounds, which though apparently then on an arterial intersection might, with a change in plan, be left unserved by an artery and zoned for some purpose other than that for which they bought it. There can be no question that this enhancement in price was paid as a result of an understanding with the Mayor that Dominion Stores would have the privilege of making an exchange to ensure that it got, in the ultimate subdivision, a site on the intersection of the arterial highway.

From the evidence reviewed earlier there can be no doubt that there was an understanding between Carroll and the Mayor that if in the process of settling the plan of subdivision of this area, the point of intersection of the main highway was changed, the land purchased from Shandro and the Mayor by Dominion Stores would be traded with the city for land facing on the intersection. This is borne out by the evidence that "we understood that we would be able to trade land and get the shopping centre" even though the city had to acquire the property for trading purposes by purchase, and by the letter consenting to annexation.

The record shows that Dr. Shandro and the Mayor realized from the sale of their interests in Boulevard Heights, a total profit of $60,000 each.

Sitting side by side with Menzies and Tweddle every day so that they could together serve the city's interest, the Mayor while serving his own made no disclosure to his colleagues.

The evidence given by Dr. Shandro on this subject should be examined by the Attorney General for such action, if any, as he conceives it his duty to take.

The evidence with respect to the conduct of Mr. Carroll and the Dominion Stores likewise should have the attention of the Attorney General.

I find that there was improper policy, administration and handling of land owned by the City of Edmonton as alleged by the Petitioners in that there was gross misconduct on the part of the Mayor and a complete abandonment of responsibility by the town planner Mr. Brown.

In view of the Mayor's suppression of the facts from both Commissioners and the council, no impropriety can be imputed to them.

OTHER DOMINION STORES LAND TRANSACTIONS

Because of the conditions disclosed by the evidence on Boulevard Heights, the whole of the transactions with Dominion Stores were examined.

In order to enable us to consider the Dominion Stores transactions in sequence, it is proposed to deal next with the property at the corner of 97th Street and 132nd Avenue.

The company had acquired a parcel of land at the northeast corner of 97th Street and 137th Avenue in anticipation of some development in that district which was

outside the city limits. As a result of the McNally Report issued in January of 1956, it became apparent that this property would not be suitable for a store, at any rate for some time to come. The company then addressed itself to a study of the territory south of 137th Avenue which was in the city and as a result advised the city plannerpon the 4th May 1956 that it wanted thepplanner to keep in mind the company's interest in having a location for a store, of about fifteen acres, on the northeast or southeast corner of 97th Street and 132nd Avenue. The reason the company picked that particular location was that its land man, Mr. Robertson, knew that the city owned the property. Instead of offering to buy the desired property from the city, the company began to look for an area in the vicinity which it could buy and trade ultimately to the city for its lands at the intersection more favorably located through zoning. By this method the company got the benefit of the upgrade in value from zoning without having to bid competitively. Mr. Carroll says that his company has found it is much easier to get a trade through with the city than to buy property from the city zoned for a particular purpose.

In the course of these inquiries, Mr. Carroll says that he mentioned to the Mayor that his company was looking for some such property. During that discussion the Mayor made the suggestion that there were thirteen acres available through the Edmonton Trust Company.

The fact is that these thirteen acres were then in the process of being acquired by the Mayor who was using the Edmonton Trust Company's name in the transaction although no one but the Mayor was interested. It is borne in mind that since the McNally Report in January 1956, Mr. Carroll and his men had been looking for a site in this area and had so advised the city planner on the 4th May 1956. It is to be noted that on the 28th April 1955, the then owner gave an option to Tougas to purchase the property subsequently purchased by the Mayor. A year later, on the 27th April 1956, Tougas sold the property to Canalta Construction Company Limited. In July the Mayor, through Edmonton Trust, entered into negotiations which, on the 15th August 1956, resulted in the Mayor taking over the option to purchase held by the Canalta Construction Company. He acquired the property for the sum of $45,000 of which $15,000 only was paid on the 15th August 1956 when the agreement was signed. On the very day on which the Edmonton Trust Company representing the Mayor, executed the agreement to acquire the property, Mr. Carroll advised his company's solicitors, Cormie and Kennedy, that the company had made arrangements to purchase from the Edmonton Trust Company this land which he swore it had discovered through the Mayor. Mr. Carroll said in answer to a direct question that he was unaware at this time that the Mayor had any interest in the property, whereas the fact is that it then belonged to the Mayor and

was held for him in trust by the Edmonton Trust Company. If Mr. Carroll's statement is true, of course he did not know of the interest of anyone in the property but the Edmonton Trust Company Limited. I do not believe Mr. Carroll's testimony on this point. Anxious as he was to locate a parcel in this area, there can be no doubt that he or his helpers had familiarized themselves with the ownership of every parcel of land in that area and they could hardly have been unaware of the earlier transactions between Tougas and the Canalta Construction Company Limited and the recent disposal of the land by that company.

In a letter of the 15th of August to Messrs. Cormie and Kennedy from Stewart, Carroll's helper, the author says that the transaction is to be on terms with a down payment of $15,000 and instructs the filing of a caveat, but adds significantly:

> "The transaction is quite familiar to Mr. Hawrelak, your Mayor, and I mention this because you may find that you will be dealing with him at some point in this transaction."

If Mr. Carroll's statement is true that he did not know of the Mayor's interest, it is difficult to understand this paragraph because one is bound to ask why Mr. Carroll thought the Mayor, a disinterested party, would be familiar with the transaction, and why the company's solicitors might find "that you will be dealing with him at some point in this transaction." That there was some understanding between

Hawrelak and Carroll that this land when acquired by the company from the Mayor would be traded to the city is clear from the company's letter to its solicitors on the 29th May:

> "Confirming our telephone conversation of some days ago, we would appreciate it if you would get in touch with Mayor Hawrelak to work out details of swapping the land we own for the commercially zoned, city-owned land."

After a considerable lapse of time, the exchange of property was worked out with the city, the difference in value being paid by the company to the city and the swap subsequently approved by the council. The city gave the company full credit for the amount of money it had paid the Mayor through the Edmonton Trust Company. Thus, the city, in effect, acquired the land from the Mayor at the price at which he had sold it to Dominion Stores.

The Mayor had acquired this property for $45,500 and had promptly sold it to Dominion Stores at a profit of $20,600. No disclosure of the Mayor's interest was made by him to his fellow Commissioners at any time, nor was the council made aware of the fact that it was in fact buying from Dominion Stores, through an exchange, a parcel of land on which the Mayor had made this profit.

The evidence is perfectly clear that at the time the Mayor sold to Dominion Stores he knew the property was to be swapped with the city. He recommended to the city council that the swap should be made. I am satisfied that at some time before the purchase from the Mayor was made by

Dominion Stores, Mr. Carroll knew that the beneficial interest in the property belonged to the Mayor.

The evidence is clear that the city needed the parcel it got in the swap for civic purposes in that area. One wonders whether the Mayor advised his fellow Commissioners and the city council of the opportunity to acquire this land for civic purposes at the price he paid when he bought it, as was his duty as Mayor. This is a striking illustration of the misuse of the powers of town planning because here the authorities did not plan for a shopping centre, but planned for a shopping centre for Dominion Stores and deprived the city completely of any competitive offers for the land which might have been forthcoming in the light of the change in zoning. While it is true that the council approved the transaction, it is equally true that they were completely uninformed of the real significance of the swap.

There were other transactions between Dominion Stores and the City of Edmonton.

As a result of Mr. Carroll's survey of Edmonton in 1955, no specific recommendations appears to have been made, except that in August 1955, the city apparently reserved from sale some of its land on the Groat Road. Mr. Carroll was fully and continuously informed of the developments contemplated by the town planning department. In the light of this knowledge, as early as October 1955, Dominion Stores took options on the property on the Fort Trail which were held by it to be exercised in March and April 1956.

While it may well be that the citizens who gave the options in 1955 were aware that the property would have some ultimate and different use than that to which they were putting it, there is no evidence that any of them were informed,nor that they could have been informed about the city's thinking as Mr. Carroll was.

Likewise, the pressure of his presence and the weight of his office were brought by the Mayor to bear on a Mr. Haswell to compel a sale by him of his property to the city so as to permit a swap with Dominion Stores and the closing of the Fort Trail, to the major enhancement of Dominion Stores' adjacent holdings.

Northwest of the city at 149th Street and 118th Avenue, at a time when Mr. Carroll was looking for warehouse sites in that area, the Mayor acquired a parcel of land, a part of which Dominion Stores bought from him through the Edmonton Trust Company, unaware, according to Mr. Carroll, of the Mayor's interest.

The facts with respect to the development of Boulevard Heights and the Mayor's interest there have been recited.

Examined singly and collectively, all these transactions except the one beyond the city limits involved concessions from the City of Edmonton that were made by its council on a recommendation of the Mayor and Commissioners. Commissioner Menzies and Commissioner Tweddle had no possible interest except the interest of the City of Edmonton in the

outcome of any of these transactions. The Mayor throughout seems to have had a pecuniary interest which he did not disclose even to his fellow Commissioners, let alone to council. He says he did not vote but he did join in the recommendation. The Mayor is an able, energetic, forthright personality with a fine knowledge of the city's affairs, in whom it is clear that council had and was entitled to have the utmost confidence. Its members believed and the Mayor permitted them to believe that the recommendations of the Commissioners were their unbiased judgments, arrived at by detached minds loyal to their employer, the City of Edmonton. Whether the council would have approved the transactions had they been made aware of the Mayor's interest or whether the city would have made or lost money but for the Mayor's intervention as a buyer or seller in these properties, is not a matter for my consideration.

The Mayor says he did not vote because The City Act says that where a person entitled to vote at a council meeting has any interest, he must not vote. It is difficult to believe that a man of the Mayor's intelligence ever considered that his duty ended there. On his own testimony, he conducted these transactions in the name of the Edmonton Trust Company. He did not disclose his participation with Dr. Shandro but carried his interest behind his name. If the transactions were clear and above-board, there would have been no need for this subterfuge, which he used in a manner that might mislead Mr. Carroll, and did mislead his fellow Commissioners, and the council too, for his personal profit.

TERMS OF REFERENCE ITEM (a)

Under this head, it is alleged that certain employees and officials of the City of Edmonton had accepted or solicited bribes in the course of their employment and in connection with the discharge of their duty.

LAND AND ZONING DEPARTMENTS

The civic employees specifically involved in this matter were the head of the land department, Norman A. Rault, and the zoning officer in the town planning department, Fulton X. Frederickson.

One Alexander Lakusta, a building contractor, testified that he had paid Rault as head of the land department $300.00 in cash in consideration of Rault undertaking to let him have three city lots at the listed price of $2,000 a lot. Mr. Rault admitted that he got the money. While Lakusta swore that he paid a like amount to Frederickson this was denied by Frederickson. However, Frederickson did not deny, but indeed admitted, instances in which he had himself retained by applicants for zoning permits to provide them with plans for a fee. This was made possible through the quite improper use of the architect's certifying stamp of one Nicholas Flak, a member of the Architects' Association. It is perfectly clear that Mr. Rault accepted from Lakusta a reward for doing an act relating to the affairs or business

of the city and showing favor to Lakusta.

It is likewise clear that Frederickson, through the use of his office, secured for himself a benefit for showing favor to Lakusta and others with relation to the affairs of the city at a time when he was in its employ.

It is clear that Lakusta offered and paid Rault a reward for the use of his influence in endeavoring to secure city lots. The evidence discloses other instances of the taking and giving of rewards of benefit.

This testimony is drawn to the attention of the Attorney General for such action, if any, as he may deem it his duty to take.

ALBERTA GAS TRUNK LINE STOCK

The Mayor acquired from the Imperial Bank 340 shares in Alberta Gas Trunk at the time of issue and at the issue price of $5.25 per share.

The Mayor did not carry any of his personal accounts at the main office of the Imperial Bank through which he secured this stock but that branch did handle the city's banking. It is common knowledge that there was a great demand for this issue, so great that it had to be rationed. After applying the ration of 20 units to each applicant there was available a surplus for distribution. This surplus was distributed by the various brokers, trust companies and banks that had handled the issue. They had a discretion. It was from such a surplus in the Imperial

Bank's hands that the Mayor was given his 340 shares. Many of the issuing institutions gave customers parts of the surplus over ration which were in their hands.

There was a ready and a quick profit available on these shares at the time of issue and they have since enhanced in value materially.

The Commission is asked to draw the inference that the Imperial Bank gave these shares to Mayor Hawrelak as a bribe.

TRANS-CANADA
PIPE LINE STOCK

Mr. H. R. Milner, Q.C., has been a senior officer and director of Northwestern Utilities Limited for many years. This is a utility company which produces or buys gas which it transports and distributes to the citizens of Edmonton, its reward being fixed by the Public Utility Board at a percentage return on the capital employed.

At the times relevant to this inquiry, Mr. Milner was also a director and vice-president of Trans-Canada Pipe Line Limited, then engaged in an attempt to get permission to export gas from Alberta to Eastern Canada and to the United States and thus a competitor of Northwestern Utilities for the supplies of gas available in northern Alberta.

Under The City Act, the council of the City of Edmonton is authorized to represent the consumers who are residents of Edmonton in connection with the fixing by the

Public Utility Board of the prices at which gas may be sold in the City of Edmonton. An increase in the price of gas was of the gravest concern to the citizens of Edmonton because it would be a major element in their cost of living and a deterrent to the development of industry in this high freight area. The Mayor therefore had a duty to keep himself in a position to perform his duty of preventing, or at any event minimizing the increase in the price of gas to the citizens of Edmonton, while Mr. Milner was concerned with the promotion of an enterprise that would make Trans-Canada a competing buyer for gas in Alberta with every prospect for a resulting increase in price. It was in these circumstances that Mayor Hawrelak called Mr. Milner and asked him to endeavor to make available to the Mayor some units in Trans-Canada Pipe Lines. These units, when issued, consisted of a bond of the par value of $100.00 and 5 common shares conditioned to be released from the unit after the lapse of stated times. On the over the counter market prior to the issue of the units, the shares had sold for as much as $20 apiece and the units themselves went to a premium on the day of issue which increased as time went on to very substantial gains.

The Royal Bank notified Mayor Hawrelak that at Mr. Milner's request, it had set aside for him 300 of these units at the issue price of $150.00. This gave the Mayor bonds worth a par of $30,000 and 1500 shares in the common stock of Trans-Canada, and a certain and immediate profit

available at the time of issue and an ultimate gain that market interest seemed then to assure would be large.

Mr. Milner says that the Mayor is an old friend, that he had had like requests from many of his friends. The fact that the Mayor had a duty seems to have been overlooked.

In both these transactions the sums involved are beyond the levels that could be considered as tokens of friendship. There is no suggestion that the shares were given corruptly and it would be wrong to suggest that they are bribes or were intended to induce a deliberate breach of any specific duty. Human nature being what it is, however, it is clear that they must erode the fabric of integrity of the recipient and make it unfit to stand the stress of duty. So long as our system of government is based on integrity, the holder of office must forego gains in such circumstances.

POWER PLANT
GAS TURBINE

It appears that in May of 1956, Mayor Hawrelak went to Europe as a guest of Canadian Pacific Airlines on its Polar Flight, a courtesy extended by that company to many public men as a means of advertising the efficiency of that means of transportation to Europe.

Prior to that time, the Brown Boveri Company of Canada Limited had contracted with the City of Edmonton to build and supply to the City of Edmonton a gas turbine for use

in the city's power project. The plant was to be constructed in the company's factory in Switzerland. To reassure the city of their competence to supply this machine, the manufacturers who secured the contract by tender, invited the city to send a representative of its choice to Europe to check progress of the work and witness tests. While the Mayor was in Europe, his expenses as a guest of Brown Boveri were provided by that company. It is to be borne in mind that the City of Edmonton operates a major plant for the purpose of generating electricity and must be constantly concerned with its efficiency and its expansion. Accordingly, its senior officers must be in frequent contact with the suppliers of machinery appropriate for the city's purpose.

While in England, the Mayor visited the offices of the English Electric and Vickers companies, both firms with plants in England and major suppliers of electrical equipment in the markets of the world. These firms paid the Mayor's expenses on the occasion of his visit to their facilities. It is common knowledge that courtesy in this form is frequently extended by firms to potential buyers representing enterprises of the magnitude of the electrical development carried on by the City of Edmonton. They are tendered as evidence of good will. They cannot be regarded as a reward for past favors or a payment to encourage future favors. There is no foundation for any implications of impropriety in the Mayor's conduct. All of these payments must be regarded as courtesies to the City of Edmonton, a large and responsible customer.

GENERAL PURCHASING

An item described as (d) in the terms of reference alleges excessive cost and improper purchasing, leasing and rentals of equipment and material by the City of Edmonton.

Evidence was given by the purchasing agent Mr. Charles St.G. Hustwick, the city engineer Mr. J. D. A. Macdonald, Commissioner Menzies and Donald M. Murray who was in charge of work shops and heavy equipment.

Mr. Elford, the complainant, stated that he could not induce the city's purchasing agent to buy from him some automotive lubricating oil although his company, Rock Oil, had tendered at a price below that at which the contract was awarded to a large oil supply company.

The city officials named gave evidence as to the method of operation in purchasing, leasing and rental of goods, services and equipment. There is no evidence which will support any inference of wrongdoing of any officer or employee of the city.

Mr. Elford's bid was apparently rejected by the purchasing agent because he could not satisfy himself by the tests he had available that the oil which Mr. Elford's company would supply would be up to city standards. It is not difficult to understand Mr. Elford's feeling of frustration and it may be that the city can evolve some method by which smaller suppliers may be able to satisfy the city

departments of the fitness of their products for the city's needs. This is purely a question of policy that it is the duty of the Commissioners to resolve in the normal course of their management of such affairs.

It therefore follows that the allegations of the Petitioners that there have been excessive costs in purchasing, leasing and rentals of equipment and material by the City of Edmonton fail.

TERMS OF REFERENCE ITEM (c)

The terms of reference to the Commission include as clause (c) the following item, "Improper Handling and Administration of Town Planning".

Before there can be any examination of improper handling and administration, there must be some understanding of what constitutes proper handling and administration. To define the latter it becomes necessary to give some attention to the Acts of the Legislature respecting town planning and the existing by-laws of the City of Edmonton on that subject.

Nearly all the land in the City of Edmonton is held by its owners in fee simple. Such a title gives the owner the right to use his property as he chooses and to the exclusion of all others. The right, of course, has always been subject to law and will in the future be subject to new laws properly passed by the Legislature and interpreted by the courts. The right, however, is not subject to impairment

except by an Act of the Legislature which states in clear and unmistakable language the extent of the invasion of the right that the Legislature means to occur. Where, therefore, an Act of the Legislature at first blush appears to cut down the rights of an owner in fee simple or dilute his enjoyment of the property the Act should be examined to determine how far the language goes in invading rights so clearly defined and so long recognized. This brings us to a consideration of the town planning legislation.

Town planning has been known in one form or another for many years. The use of compulsion, however, on a broad scale, is of recent origin. The right to take property without the consent of the owner where there is a paramount public need has been recognized since early times and has always been accompanied by compensation after the decision of the public need has been made by a body functioning judicially or by one politically responsible.

The compulsive feature in town planning first became conspicuous under an Act passed by the Parliament of Great Britain under a Socialist government which, it will be recalled, was dedicated to the nationalization of industry and property. That Act expropriated to the State the development value of land. It was in fact an increment tax taking 100% of the gain on the value of real property accruing from the development of its environment. That Act provided a measure of compensation although that has been partially suspended by subsequent legislation.

The very wide powers to create and destroy wealth that were vested in the town planners by that Act gave no concern to Parliament as the profit accrued to the State. There was no temptation on the planner or other authorities administering the Act to acquire the new wealth their rulings created because there was no way by which they could get it individually.

In this country we have not by legislation gone that far. The ancient right to enjoy his property to the exclusion of others is still vested in the owner of the fee simple, except to the extent that it has been removed by our town planning Acts and subject also, of course, to the historic right of expropriation for a demonstrated paramount public need. The right of expropriation in this country is illustrated by our various statutes with respect to that subject and in the case of the City in the terms of the following section of The City Act:

> "298. (1) If the council desires to acquire land, either within or without the city, for any purpose authorized by this Act, or for the purpose of preventing the working of any coal mine within, upon or under any portion of the land comprised within the city, or for the purpose of improving any land owned by the city, the commissioners may negotiate with the owners and occupiers of such land or other persons interested therein for the acquisition of the land by agreement, and in case they cannot acquire the land at a fair price by agreement, the commissioners may take steps to acquire the same by expropriation in the name and on behalf of the city.

> "(2) If the council, by agreement with the owners or persons concerned, cannot, at an amount that the council considers a fair price, acquire title to any parcel of land, or any estate or interest therein, required for the municipal public use of and by the city in or in connection with any plan of development of any particular area of the city and that the council bona fide deems to be in the public interest, whether such plan of development is to be undertaken solely by the city or in conjunction with any other person, then the council may acquire such title by expropriation proceedings in the name of the city."

It is important to notice how carefully the Legislature defined the city's right to compulsory taking by expropriation proceedings. Moreover, by the same section it is provided that the person affected by the expropriation may appeal to the Board of Public Utility Commissioners "to determine whether the plan of development concerned is in the public interest."

It will thus be seen that expropriation requires the participation of the whole council. It requires that their decision must be bona fide, that is, in good faith, and it permits a review of that decision by the Public Utility Board, an independent body functioning judicially.

We have had a succession of Town Planning Acts in Alberta and it is interesting to note that they have, without exception, declared the purpose for which they were passed. For instance, the Act of 1913 declared that "the Minister may make a town planning scheme with the general object of securing suitable provisions for traffic, proper

sanitary conditions, amenity and convenience." The 1929 Act preserved these purposes and added the regulation and development along highways. In 1950 by Chapter 79 of the statutes of that year, a consolidation of the preceding Acts was made and the name was changed. This Act is a departure from those which had preceded it and is a striking illustration of the extent to which legislative bodies show a tendency to abdicate their function of legislating in detail by delegating a legislative authority to the Minister, and through him to some subordinate body or individual.

This process of having Parliament, in doubt about what it ought to do, enact some legislation leaving it to the discretion of a Minister or a department to do what they want to do, is not new. It is a growing product of the surrender of rights to which our citizens became accustomed under the exigencies of two world wars. It is leading to the use of Parliament by ministers and civil servants to vest in them the power to change the subject's right as they choose while the subject believes that changes reflect the considered judgment of Parliament and obeys accordingly. Every minister and civil servant who counsels such changes honestly believes that they are necessary to facilitate his conduct of public affairs, unmindful of the fact that under our parliamentary system alterations of citizens' rights ought only to be made after the fullest consideration and understanding by the members

elected to parliament by citizens. It has been the subject of comment by many constitutional writers and was described by Lord Hewart in his book entitled "The New Despotism" in terms as follows:

> "Writers on the Constitution have for a long time taught that its two leading features are the Sovereignty of Parliament and the Rule of Law. To tamper with either of them was, it might be thought, a sufficiently serious undertaking. But how far more attractive to the ingenious and adventurous mind to employ the one to defeat the other, and to establish a despotism on the ruins of both! It is manifestly easy to point a superficial contrast between what was done or attempted in the days of our least wise kings, and what is being done or attempted today. In those days the method was to defy Parliament - and it failed. In these days the method is to cajole, to coerce, and to use Parliament - and it is strangely successful. The old despotism, which was defeated, offered Parliament a challenge. The new despotism, which is not yet defeated, gives Parliament an anaesthetic."

This statute did contemplate a delegation of substantial powers to the Minister and through him to the councils of municipalities. The exercise of this delegated legislative authority by subordinate bodies has led to confusion amongst owners and administrators alike.

The statute provided for zoning in clear and unmistakable language. It laid down in express terms what council could do by passing a zoning by-law and it left no doubt about the council's right to impose, by by-law, upon the owner of the fee very extensive impairments of his right of enjoyment. It is notable that where the Legislature

meant that there should be such an impairment it said so in clear terms.

The Act contained a provision permitting cities to adopt a general plan of development in the area within their boundaries. It provided that if a city by by-law advised the Minister of its intention to adopt a plan of development, he could by order authorize it to conduct development within the city by a process called "interim development" in the municipality prior to (a) the completion and adoption of the general plan, and (b) the passage of zoning by-law prepared in accordance with the general plan. The city acquired this right when the Minister was satisfied that the arrangements made for the preparation of a general plan and the administration of interim development control were satisfactory. The Act by Section 70 then authorized him to make an order in which he was bound to

> "(a) suspend the operation of any existing zoning by-law in the municipality within the described area over which the interim development control is to be exercised, and
>
> "(b) authorize the council, upon the coming into effect of a by-law adopting the Minister's interim development order, to exercise interim development control over the described area."

Sections 70 and 71 evidently have been interpreted as supporting a much broader interference with individual rights than the express words of the Act contemplated because the interim development process can have no

wider application than the statutes provided for the ultimate general plan. This is clearly laid down by Section 64 and its language deserves attention it does not seem to have had.

> "64. (1) The general plan shall be based on surveys of land use, population, transportation, communication, services and social services within the municipality."

Section 65 gives more detail but does not expand the section beyond the purposes declared in Section 64. It is within the limits of the area defined by Sections 64 and 65 that the Minister and council has power to function pending the settlement of the plan, because interim development could be no wider than the ultimate general plan based on the elements contained in Section 64.

Within those limits, pending the adoption of an ultimate plan, Section 68 (2) provides:

> "Control shall be exercised over the development within the municipality by the council on the basis of the merits of each individual application for permission to develop, having regard to the proposed development conforming with the general plan being prepared."

The task of council under Section 68 (2) is a most difficult one. In the City of Edmonton no general plan has been prepared. Mr. Brown, the town planner, says that he had not had time and he has not had the help, and that the plan is no more than one-third complete. Moreover, the old zoning by-law of the City of Edmonton was repealed of

necessity by the provisions of the Minister's order. The City of Edmonton did attempt to give the old by-law some status by including in its by-law the statement that the old by-law was to be used as a guide. The process outlined by Section 68 was to continue until the completion and adoption of a general plan and the passage of a zoning by-law "prepared in accordance with the general plan." The struggle of council therefore under Section 68 (2) has been to make decisions from day to day "having regard to the proposed development conforming with the general plan being prepared." This duty was to fit the present into a future plan almost unknown and ill-defined.

By an amendment contained in Chapter 89 of the Statutes of 1959, it appears from the 1st of January this year the council has some right to delegate some of these matters to the town planner. Looking at the language of the Minister's order and of the Interim Development By-law, there is the gravest doubt that either has been kept within the terms of the legislative authority which the Legislature sought to delegate. This doubt raises the most difficult problems of administration and leaves the citizen subject to constant and arbitrary changes in his property rights that make him little more than an owner in name.

In this confusion, Mr. Brown, the town planner, has functioned by exercising rights and restraints as stringent as those which he was trained to apply under the British Act under whose operation he was trained. The extent

to which the whole concept of town planning in this province has been influenced by men trained under the British Act is the principal contributing factor to the excess of town planning restraints in this province over those which seem to have been contemplated by our legislation.

There being therefore no plan and zoning of doubtful validity, we have had a piecemeal control of development within the city exercised in part by the council but in much larger measure by the town planning department. Under this misconception, it is my opinion that there has been improper handling and administration of town planning of which some examples will follow.

Nearly every difficulty with which this Commission has been concerned has arisen from the use and abuse of those powers, most of which were not authorized by our statute but were honestly believed by the town planners to be authorized by our Act just because they were authorized by the British Act. This power to create and to destroy wealth by arbitrary ruling and to direct the benefits of its creation to the ownership of persons chosen by the planning body has been the cause of almost all of the problems before this Commission. It is another illustration of the oft-quoted statement of Lord Eldon

> "Power corrupts - absolute power corrupts absolutely."

Fortunately this misconception of the meaning and purpose of the 1950 Act in Alberta has been removed by the enactment of Section 2 (a) of the Statutes of 1959, Chapter 89:

> "2a. The purpose of this Act is to provide means whereby municipalities, either singly or jointly, may plan for orderly and economical development without infringing on the rights of land owners except to the extent that is necessary, for the greater public interest, to obtain orderly development and use of land in the Province."

This section may well be purely declaratory of the law as it always was. A right of appeal has been restored to the provincial planning board although the constitution of that board yields no place for ownership to bring its view into play in forming judgment.

EXAMPLES OF IRREGULARITIES IN TOWN PLANNING PRACTICE

The following irregularities in town planning practice came to the attention of the Commission. They are typical but not exhaustive, and others of a like kind were submitted but not specifically dealt with.

BOULEVARD HEIGHTS

Reference should be made to the section of this report dealing with Boulevard Heights. The town planner gave a letter to Mr. Gray which, though it may not have had any

legal significance, was issued by him and accepted by Gray for the benefit of Shandro and the Mayor on terms that it did create a moral obligation which added value to the property. It was a wholly unauthorized attempt to grant a monopoly by a town planner who has no authority whatever to consider the economic question that would be involved in the location and number of shopping centres in a city. If the town planner can say how many shopping centres there should be, he can say how many filling stations, he can say how many gent's furnishing stores, he can say how many hardware stores, and how many hotels. His function would be to protect business from itself and to struggle to ensure those who, by his rulings, are permitted to engage in business that they are bound to prosper. Boulevard Heights is an excellent example of the abuse of zoning for the purpose of the granting of such a monopoly. Boulevard Heights is a good example of the abuse of the power of replotting. The Act contains provisions permitting the rearrangement of the survey of an area formerly subdivided so as to make it more suitable for modern uses. If 60% of the owners owning 60% of the land consent, the city may cause the plan to be cancelled and the non-concurring owner must then take whatever the city offers him by way of exchange in land or go to the Public Utility Board to have his loss assessed.

Here a "replotting" applied. The rearrangement of the survey in Boulevard Heights gave some of the land a particularly high value because it permitted its use for

purposes which could afford to pay large sums for the location. This is illustrated by the sites for a shopping centre and a filling station at the intersection of the arterial highways. When Dominion Stores found that the six acres which it had acquired from Dr. Shandro and the Mayor would be zoned for residential purposes and not for stores, it made representations to the city to acquire what had become the city's property through replotting and had become available for a store site and a filling station site. The part of this area acquired by the city up to that time, however, was not large enough for the purposes of Dominion Stores but there was adjacent and within the area zoned for stores a small parcel of an acre and a half belonging to some other owner and to the rural municipality. Dominion Stores suggested to the city that it should acquire this acre and a half. It was advised by the civic authorities that it ought not to interfere at that stage because the city was in the process of "trading out" the owners. What was meant by that explanation was that the city would acquire that acre and a half from the owners by conveying to them other land in the area which, of course, could not have nearly the value of the area which had attached to it the special use for which it had been zoned. Thus the gain from replotting did not pass to the owners whose land was taken but accrues to the city or someone like Dominion Stores with advance knowledge of the city's thinking, that puts

itself in a position to gain the property and enjoy the increment without competing with others.

Where replotting is undertaken in a subdivision in which the city owns land and in circumstances where it will ultimately plan the lay-out of the new subdivision, the city becomes judge in its own cause. The zeal for the rights of the city that is the normal habit of a city officer precludes him from being judicial in dealing with the taking of one man's land by trade for other land for the city. However honest his effort, his judgment is warped by the natural bias and loyalty to his employer's interest.

CITY CENTRE MOTEL

Here the land belonged to the city and had been zoned "Residential". Its use had been prohibited pending a decision as to the wisdom of building on it at all in view of its proximity to the airport. If the decision had merely been to permit it to be used as zoned, namely residential, notwithstanding the presence of the airport, then all citizens would have had an equal opportunity to acquire and enjoy it once they were advised of the city's intention to permit its use. As soon as that property became zoned for some purpose other than residential, its value was greatly enhanced. It was in fact rezoned by council by implication at the time of its sale for a motel. The council was unaware, however, that they were in fact changing its zoning, being led to believe by the town planner

that it had previously been zoned for motel use. Here the council, notwithstanding its earlier resolution, refused to send for valuations, being content to rely on the recommendation of the Mayor and Commissioners that it should be sold at the price they recommended. This laxness on the part of the town planner and the lack of information supplied to council led to the loss of an opportunity to at least try to secure more money for the city from other potential but uninformed buyers.

BERTHA BOYKO

Mrs. Boyko owned a parcel containing several lots contiguous to a school site which the school board desired to expand. They found themselves unable to negotiate a voluntary purchase from her at a price that they thought was appropriate. They therefore induced the city to undertake replot proceedings as a result of which the school board wound up with two lots out of Mrs. Boyko's property and she was given two others whose location gave them no such value as those she had been deprived of because there was no contiguous occupant in like need of land to the need of the board. There was doubt that the board could have expropriated because the necessity for the lands as distinct from the convenience of having them, was not clear.

This instance constitutes a flagrant example of the misuse of the replot powers. While it is true that the individual's rights must yield to the dominant public

need, the courts have always said that Parliament never intended that the common good should be served by victimizing an individual in loss because of the accident that his land rather than his neighbor's, should be required for public purposes.

OSTAP LECH

Ostap Lech, a retired employee of the City of Edmonton owned a piece of property and lived in a house at the intersection of 118th Avenue and 142nd Street. At this intersection, the former town planner Mr. Noel Dant, desired to make a traffic rotary which could only be constructed if Mr. Lech's land could be made available to form part of the rotary. Accordingly, the city approached Mr. Lech who agreed to give the city his lots if they would move his house further to the east on the same street and away from the intersection. This was done.

A new planner came to town and with him new ideas, one of them being to abandon the idea of a rotary. Thus Mr. Lech had been deprived of his lands to no purpose.

In this same block to the east of the Lech property, one Davidson had a gasoline station. The construction of a service road on the north side of the east-west road cut him off from ready access to the highway so that the city had a problem with him. This was solved rather simply by giving him the land they had taken from Mr. Lech. Mr. Davidson then promptly sold the old Lech site to the

British American Oil Company for a very substantial sum.

Here we see the dangers of leaving planning in the interim development stage. A title to property gives something less than squatter's rights if it is to be changed as rapidly and as often as the planning department changes its mind.

Mr. Lech was reasonable and told the council that he did not want to complain. He felt that the profit which would have been his if he had been allowed to keep his old lots should be paid to him.

The attention of the council of the City of Edmonton is called to the circumstances in which Mr. Lech seems to have been penalized by his co-operation.

BUENA VISTA

Three landowners in the Buena Vista area came forward to describe their experiences, which are typical of the experiences of several other landowners in that area. It appears that the City of Edmonton is using its zoning to deny these people the right to expand or alter the present use of their lands because the city has in mind some day acquiring the land for a park.

The chairman of the Interim Development Appeal Board, Mr. Hyndman, stated that his board would not permit such a use of zoning unless the city could assure the board that the new use would be applied to the property within a matter of something less than a year. It is perfectly clear,

however, that the right of appeal to the Interim Development Appeal Board, which is technically available to every land-owner, is not available in practice. One of the witnesses in this instance gave every evidence of having been confused and frustrated by the futility of his efforts to get any review of his position at the level of the people with whom he comes in contact as an ordinary man behaving in a normal way in his relationship with the civic personnel structure.

A letter from one of what Lord Hewart called "the new despots" went to the citizens in this area, enclosing a proposed replot, in terms as follows:

> "Owing to the topography of the land and the difficulties which will be encountered when the question of servicing this land arises, each owner in this area <u>must agree voluntarily</u> to accept a lesser area under the new plan than that which is presently owned."

This is a misuse of the town planning process for the purpose of down-grading the value of property against its ultimate acquisition by the city for public purposes. It is in effect a cruel method of expropriation which denies appropriate compensation to its victim.

<u>PROPERTY NEAR ST. JOHN'S ANGLICAN CHURCH</u>

The city owns two lots, Lots 11 and 12, Block 2, Plan 6918 E.T. in the vicinity of 108th Street and University Avenue. On the corner is a pie-shaped parcel which is not of sufficient size by itself to support

commercial development but is now occupied by a house which is being used as a store.

The city has steadily refused to sell its two lots until it finds a buyer who can provide for a development which will include the pie-shaped parcel.

Mr. Paul Shandro, the Mayor's brother-in-law, acquired the pie-shaped parcel in trade for a farm and the suggestion of the complainants was that he did so in the hope that the Mayor's influence would enable him to buy the two city owned lots or compel a buyer to acquire his pie-shaped lot as a condition precedent to its ability to buy from the city.

There is nothing in the evidence to support the charge that Mr. Shandro bought this lot with any such program in mind, nor was there any change in the city's policy with respect to these lots following Mr. Shandro's acquisition that differed in any way from the policy which the city had had theretofore with respect to them. Mr. Menzies' testimony made this clear and the object which the city has in mind in refusing to sell seems sound. In any event, this is a decision for the city.

ROSSLYN HOTEL

A syndicate which included as one of its members the Mayor's brother-in-law, Dr. Shandro, acquired a parcel of land which it endeavored to have zoned so that it could build a hotel upon it. The zoning request ultimately

reached the provincial board which rejected the request but referred the problem back to the council of the City of Edmonton suggesting that the zoning sought was an appropriate use for the area provided that other adjacent lands were brought in. These included the Beulah Home property. The city council directed the planning and land departments to undertake to bring these adjacent areas into the zoning request. This accomplished, the council then approved the zoning and the syndicate acquired the right to build its hotel.

Council's approval was given on the 3rd October 1956. Mayor Hawrelak acquired from his brother-in-law a half of his interest in the syndicate the next day.

While it is perfectly clear that a disclosure to the council of his brother-in-law's interest would have been wholesome, there is no evidence to support any inference of wrongdoing on the Mayor's part.

BRANDON

Pursuant to the invitation issued by the Commission to citizens to bring forward individual complaints relevant to the field of the Commission's inquiry, the Commission heard evidence with respect to property known as 11512 - 123rd Street in the City of Edmonton, owned by a Mr. and Mrs. A. Brandon. On this property, which is an ordinary city lot, is located a house and a garage behind which there is a second garage or building. According to the old by-law this property was in an area which permitted

only one dwelling and a garage on each lot. It appeared that the Brandons erected a building in addition to the house and existing garage at a time when the original garage had been converted into a dwelling. They had rented the house and occupied the garage as a dwelling periodically over the years though not continuously. Mrs. Siebert complained to the town planning department that all others in the district were conforming to the zoning requirements and the breach by the Brandons was going unnoticed. This condition was brought to the attention of the planning authorities and the legal department before the second garage was built and Mrs. Siebert testified that she was then advised by the city's legal department that she need not press the matter further as a building permit would be refused to the Brandons when they applied for permission to build a garage. Despite this assurance, the permit was granted and the garage was built.

Subsequent complaints by Mrs. Siebert led to the inspection of the property by the building inspector's department. David Shafer, one of the inspectors, gave evidence and advised that as the property now stands there are upon it two dwellings and a garage in breach of the uses appropriate to a single occupancy zone. A further report by Mr. Gosling of the same department confirmed the situation and decided that in the face of the difficulty of proof of occupancy because of the occasional use of the garage by Brandons as a dwelling, the matter ought to stand in abeyance

pending the receipt of more complaints.

This case is typical of a large number of breaches of the so-called single occupancy zoning areas which have been permitted to accumulate through times when economic considerations and congestion gave no alternative. The zoning by-law was widely and persistently breached without any action by the city to enforce it. The condition persists. The reason given for the city's inertia is that there are so many offenders that it would not be possible to enforce the by-law. Wrong has become right because it is often repeated. There could be no clearer condemnation of a town planning system which passes laws for the sake of passing them which bind only those citizens who have respect for the law. Obviously the law should be changed or enforced. The present situation can only bring disrespect for the whole of the effort to regulate development under the law.

ONISKO

Another example of this laxness was disclosed in the evidence with respect to Lot 12, Block 40 Inglewood Plan XLVI referred to in the evidence as the Onisko property and located at 118th Avenue and 124th Street.

Here it appears that the owner, in the process of constructing some buildings on the property, was engaged in operations that were not permissible at that location. As a condition of his being allowed to proceed piecemeal with his effort, he entered into an agreement with the city by

which he undertook to build the contemplated building in three stages in a manner to make available parking for a minimum of nine cars, a loading dock and a loading bay, all in accordance with the directions of the city development officer and the city architect. In this he has failed. The city has temporized with the situation thus created by permitting parking on the boulevard which belongs to the city, but the default persists although compliance with the by-law is demanded by the city of all others even though they are embarrassed by the breach.

CHAPEL OF CHIMES

The essence of the old zoning by-law was to ensure that uses of land which it did not expressly permit would only be made by the authorized authority upon notice to persons likely to be affected by any change. The old by-law did not expressly provide for the location of funeral homes.

Alderman Roy, being desirous of constructing a funeral home applied to Mr. Brown's predecessor, Noel Dant, for permission to construct and operate a funeral home in an area zoned in the old by-law for light industry. The town planner assumed a discretion which he exercised by permitting the construction of the home in that area in a manner which deprived all of the interested neighborhood of an opportunity of being heard. The funeral home accordingly was built.

Had this application been forwarded as required by the by-law to the Interim Development Appeal Board,

appropriate notice would have reached all concerned and the decision would then have been made openly and by an appropriate authority. A note on the file in the town planner's office stated that the ruling was "Not for Publication" and the Commission is asked to draw the inference that Alderman Roy had brought the influence of his office to bear upon Mr. Dant to secure his favorable ruling. I am unable to find that the evidence supports any such inference. No doubt the permit was improperly issued but there is no basis for finding that Alderman Roy used his influence or office to secure the permit.

ALBERTA ASSOCIATION
OF REGISTERED NURSES

Like permission was granted for the construction of the offices of the Alberta Association of Registered Nurses in the same area then zoned for light industrial. Mr. Brown, the town planner, took it upon himself to decide that in view of the prospective development in this area the construction of this building would be an oppropriate use for the land. He failed to bring the matter to the attention of the Interim Development Appeal Board which might very well have authorized the construction. However, all interested citizens were deprived of an opportunity to make representations to the appropriate authority with respect to the property. While it is obvious that there was an error in judgment committed by Mr. Brown, there is no suggestion of any impropriety on his part or on the part of the applicants.

WINDSOR PARK AREA

Pursuant to the invitation issued by the Commission to citizens to bring forward complaints relevant to the inquiry, evidence was submitted by Marshall E. Manning and other residents on University Drive near its junction with the Groat Road. Others similarly interested in that location also testified.

Their complaint was founded on the fact that the city has now opened the roadway past their houses to heavy truck traffic which goes to and fro across the Groat Bridge. This traffic creates a noise and vibration that is impairing the enjoyment of the properties of the adjacent residents. The residents bought their lots from the city. While no specific details of the conditions of the sale were placed in evidence, it is clear that the city sold it as a high class residential area. The presence of a service road paralleling the thoroughfare indicates that all concerned must have contemplated that the area would be one in which a considerable volume of traffic would flow. At the time of this sale the Groat Bridge had not been built and the city was considering the solution of its north-south traffic over the river by making alterations in the High Level Bridge. At this stage the city was given some substantial monetary help by the government of the Province of Alberta to enable it to build the Groat Road Bridge over the Saskatchewan River and Commissioner Menzies was of opinion that a condition of that grant imposed an obligation on the city to permit the use of

the Groat Bridge by trucks. It seems clear that the city permitted the trucks to use this street as a solution to its immediate traffic problem pending the construction of the contemplated facilities to make the High Level Bridge available for that purpose. If the city has not abandoned it, it has certainly not proceeded with the alterations to the High Level Bridge nor has it developed the other alternative of constructing a ring road. These may well be undertaken by the city in the future but until it is done there can be no doubt that there has been a serious impairment to the value of the complainants' properties by reason of the use of the street by trucks.

I had some doubt that this complaint was within the terms of reference but the evidence was led with the consent of the city. Though still entertaining that doubt, in view of the city's consent, I venture to suggest to the city that unless some alternative is to be made available within a short time, the city must be regarded as in breach of its understanding with the purchasers as a vendor of these lands.

Evidence was given by the city architect who described the work done by the Architectural Panel. Whatever authority there may be for such a panel, its concept of its duties carries it far beyond the object of the Act laid down in Sections 64 and 65. Any doubt of this is removed by the 1959 amendment Section 2 (a). Mr. Brown in his statement said:

> "In almost every instance referred to the Panel, the applicant will accept the advice of a properly competent technical body but occasionally a citizen who cannot be convinced that he is not an architect, will appeal to the Interim Development Appeal Board and later City Council."

The architect said he would move a window or a fireplace in a plan to suit it to his taste. Having regard to the fact that this country is full of homes designed and built by their owners or contractors who cannot be described in Brown's terms as "properly competent technical" people, it is clear that this board in exercising the authority that it assumes is merely substituting one man's opinion for another. Such an arbitrary restraint on the citizen's enjoyment of his property is a variance with the clear language and purpose of the Act.

In fairness to the officials of the city charged with the administration of town planning in its present confused and unstable state, I desire to say that I was impressed with the sense of frustration and despair which small landowners suffer by reason of their inability to pursue their rights through the maze of proceedings of tribunals technically available to them. Until some permanence emerges in the planning of the city's development more can be done to help these people to solve their problems by the provision by the city of talent that will advise these people about their rights rather than explain why they cannot enjoy them. While the Commission heard from Mr. Brown

some statistics on the number of applications that had been granted that seemed to indicate the number of appeals was relatively small, these figures were misleading, because they took no account of the many citizens, who being refused, properly or improperly, gave up trying. Indeed Mr. Brown's office makes no record of those who have had their requests refused but did not appeal.

CALGARY TRAIL

The next subject to be reviewed is referred to in the evidence as the Calgary Trail property. It is located on the east side of the Calgary Trail and west of the C.P.R. railroad. This property overlaps the city limits and contains 26 acres in all, 16 acres being within and 10 acres outside the city limits.

Late in 1957, Paul Shandro suggested to the Mayor that a portion of this parcel would make a good site for a motel. Attempts to have it zoned for motel had previously been made by others who had been met by the statement of the town planner of that day, Mr. Dant, that the property in question was zoned industrial, would remain industrial and would not be available for motel sites. In view of this ruling, the applicants built motels on the west side of the Calgary Trail, a less favorable location inasmuch as guests coming to Edmonton had to turn acrosst the flow of traffic to get into the buildings, whereas they could have moved out of the flow of traffic to the right on to the land in this parcel.

The Mayor was able to negotiate a purchase with Messrs. Black and Campbell, officials of Canadian Breweries Company which then owned the parcel, but to do so had to buy the whole parcel. He was given an option for $5 the purchase price to be $213,000, one-fifth to be paid on the 1st June 1958 and the balance over five years. Some change in this option was made to permit title being taken piecemeal by paying portions of the agreed purchase price related to the area being paid out. The new option was signed on May 15th, 1958.

This property found its way out of the Mayor's name into a company called Metropolitan Investments Limited which belonged to the Mayor and his wife although their names did not show as shareholders or officers. This company had been incorporated by him in January 1958.

At this stage in the program this property was zoned industrial. The Mayor's company arranged a sale of a portion of this acreage within the city to Canadian Oils for a filling station site. Mr. Grierson, a real estate agent working for the Mayor's company, appeared before the Interim Development Appeal Board to rezone the area purchased by Canadian Oil for a filling station. It came before the City council on the 24th March 1958. There were no objections. The Mayor was present. He did not vote. He did not disclose his interest in the property, and the new zoning was approved.

A parcel was sold to the City Centre Motel Company, considered elsewhere in this report, which belonged to the Mayor's brother-in-law Paul Shandro and another relative of his Michael Bordian. Mr. Grierson appeared before the Interim Development Appeal Board acting for the Metropolitan company to rezone this parcel for motel. The motel operators who had been compelled to locate their properties on the west side of the highway objected. The matter was adjourned for two weeks by the board. In that interval a member of the Interim Development Appeal Board by the name of McDougall testified that he was approached by the Mayor by telephone. The Mayor pointed out to him that the earlier zoning could quite properly be changed if the Board so desired because Dant, the town planner, had no right to make binding commitments about the permanence of any zoning from time to time existing.

After this inquiry began the witness McDougall says that in two telephone conversations and one discussion in person the Mayor recalled to him his phone conversation with respect to the lack of finality in existing zoning designations.

At the adjourned meeting the board approved the zoning. Following this approval, the matter was to come before council on the 26th of May and the Mayor knew that he would be unable to attend the meeting which in his absence would be presided over by Alderman Wilson as Acting Mayor. Before that meeting Alderman Wilson was asked by the Mayor

to come to his office. The purpose of this meeting was to enable Mrs. Wilson to survey the agenda in preparation for the meeting. Seeing this item on the agenda, Mrs. Wilson told the Mayor that the complaining motel operators were of opinion that either the Mayor or some of his relatives, particularly his brother-in-law, had an interest in this property as a site for a motel and that the complainants felt that the matter was receiving more than usual attention by the Mayor. The Mayor did not deny the interest of the brother-in-law but stated that his brother-in-law was a citizen of Edmonton entitled to the same treatment as any other citizen. He advised Mrs. Wilson that in his opinion a motel site was a proper use for this property and that he hoped the council would see fit to approve the Appeal Board's ruling. The council approved the ruling and the Mayor acknowledges that the sale was made to the City Centre Motel. There was no disclosure of the Mayor's interest nor that of his relatives.

Subsequently this matter came before council for the purpose of correcting an error in the description of the land in the record of the earlier approval. On this occasion the Mayor was present and did not disclose his interest or the interest of his brother-in-law held through City Centre Motel.

The Commission ruled that it ought not to inquire into transactions involving the area outside the city limits but testimony was taken with respect to a filling

station site outside the city limits which became relevant to the issues because it involved Globe Construction Company and Zukiwski with whom the Commission was concerned with respect to the City Centre Motel site at the end of the runway on Princess Elizabeth referred to in this report as the City Centre Motel and Dixie Boy Drive-In. The contract for this Calgary Trail development with Globe Construction was for a fixed fee of $3,000 over cost and the materials to the specifications required by Shell Oil. The disposition of this property was made by the Mayor's company to the Shell Oil company on a lease basis, the rental being prepaid until October 1968.

Subsequently, in November 1958, a five acre parcel of these lands was sold to Loblaws for the sum of $100,000 subject to an appraisal which could result in that price being lowered. The initial payment of $20,000 was to be provided by the surrender by Loblaws of a note given to it by the Mayor in circumstances to be dealt with elsewhere in this report. The balance was to be paid in cash on 1st June 1959.

The city did not own or have any interest in any of these 26 acres and the single question to be considered is the propriety of the Mayor's conduct in dealing with this land on terms that required rezoning without disclosing his interest to either the Interim Development Appeal Board of the city council.

LOBLAWS

Mayor Hawrelak was the unsuccessful candidate for the Federal Parliament in Edmonton East in the general federal election of 1957. His disappointment was keen and, although still the Mayor of Edmonton, he decided to withdraw from public life and seek a place in industry. Promptly after the election he went to Eastern Canada and there interviewed the president of Loblaws and acquainted him with his decision. Loblaws invited him to join its staff to serve as the company's representative in a public relations capacity in Western Canada on terms that would permit him to continue to operate his own bottling plant. He assured them that he did not intend to run again for Mayor and agreed that he would join them. Loblaws agreed to pay him $15,000 a year, the obligation to become effective retroactive to June 1st, 1957, contingent on the Mayor joining the company at the end of his current term, October 1957, or earlier. This arrangement was recorded in a letter dated 30th July 1957 from Loblaws to the Mayor and provided for the preparation and signing of a proper employee contract which would include for the Mayor the benefits of the company's life insurance, health insurance and other benefits accruing under company policy to employees.

The Mayor made no disclosure of this arrangement at any time and continued in office.

In August of 1957 the Mayor again saw the officers of Loblaws in Toronto and intimated to them that

he would be able to give the company more of his time than he had originally contemplated and it was agreed that his salary would be raised to $20,000.

It will be observed that Loblaws and the Mayor contemplated that Loblaws would be paying him from the 1st of June 1957 to the end of October 1957, notwithstanding that it was understood that he would continue to be a paid servant as Mayor of the City of Edmonton over the same period.

In the late summer of 1957, the Mayor upon his return to Edmonton found himself under considerable pressure from citizens to run again for the office of Mayor after expiration of his term in October 1957. He decided to run again. This change in plans, of course, precluded him from carrying out his original arrangement with Loblaws and it was accordingly revised, the new arrangement providing that he would be paid from the 1st of June 1958 at which time he then contemplated resigning as Mayor though he would have been in office then only from the end of October 1957 to the 1st of June 1958, out of the new two-year term. Loblaws agreed to this change, expecting the Mayor to join them in June 1958.

Later the Mayor represented to Loblaws that he was in need of money and they caused to be advanced to him the sum of $5,000 remitted in the form of a cheque from the Toronto solicitors for Loblaws on the 31st January 1958. Again on February 21st, 1958, the same law firm forwarded for Loblaws to the Mayor their cheque for $7,500 and on the 11th

June 1958 a final cheque for $7,500, a total of $20,000 or one year's salary.

In May of 1958, the Mayor met Prime Minister Diefenbaker in Edmonton. In the course of discussion with respect to municipal finance, the Prime Minister authorized him to say that the Federal Government would be calling a conference with municipal authorities to discuss municipal finance. The Mayor says that he had been crusading and he could not forego the opportunity to pursue this purpose. The meeting was planned for the Fall and he became the chairman of the committee that was to meet the Cabinet. The performance of this duty precluded him from carrying out his arrangement with Loblaws to retire in June 1958 and he carried on as Mayor and Loblaws were so notified.

In the summer of 1958 the Mayor signed a note payable to Loblaws for the sum of $20,000 which was dated back to the 30th of June to coincide with the date on which he had agreed with them he would resign as Mayor.

Mr. Meech in his testimony thought the rather odd method of remitting the foregoing payments to the Mayor through solicitors for Loblaws was resorted to so that the members of the staff of Loblaws who might have been disturbed by the introduction of a new senior executive into the organization would not be aware of it until the Mayor actually joined the firm. While Mr. Meech was undoubtedly perfectly sincere in offering this explanation, he may have been mistaken in his recollection because of the fact that

he produced to the Commission a cheque made by the comptroller of Loblaws payable to the Mayor and a statement showing tax deductions. These documents came into the custody of Mr. Meech and then he advised the comptroller that the matter was not to be handled in that way and the advances to the Mayor were carried in their ledger as an account receivable. The fact that the comptroller had the Mayor on the payroll and was dealing with him as an ordinary employee or officer is at variance with Mr. Meech's memory that the solicitors were used as an avenue of remittance for the purpose of keeping the Mayor's employment secret. There may, of course, be some satisfactory explanation for this seeming contradiction about which Mr. Meech was not asked.

As early as December 1957, the Mayor had some discussions with Mr. Meech about the company's need for a warehouse site in Edmonton. This seems to have been the forerunner of a transaction which became firm in June 1958 and eventually resulted in a binding agreement for the sale to Loblaws of a five acre parcel on the Calgary Trail in the area belonging to the Mayor's company, Metropolitan Investments, which was tentatively recorded in a letter of the 21st November 1958 to the latter company, which accepted Loblaws' offer on the 25th November 1958. The price was to be the sum of $100,000 subject to revision downward following an appraisal, the definition of the area by metes and bounds and the production of good title and the ordinary adjustments. The purchase was to be as of the 1st June 1959.

At the time of the hearing, Mr. Meech said that Loblaws had not demanded nor received payment of the Mayor's note for $20,000 but had arranged that it would be credited as the first payment on the purchase price of the warehouse site described above, by agreement between the Mayor and Metropolitan Investments Limited.

Over the period of the Mayor's tenure of office Loblaws had expended in the City of Edmonton some $8,000,000 in the construction of stores involving the acquisition of property and many questions of zoning, and like arrangements involving the exercise of his judgment and the performance of his duty as Mayor representing the City of Edmonton in its dealings with Loblaws. At the time of the transactions involving the payment of salary to the Mayor there does not appear to have been any pending transaction between the city and Loblaws but subsequent to the period of the Mayor's contract with Loblaws there have been other like dealings between the city and Loblaws involving the Mayor's participation as representing the city.

At no time until the actual taking of the Mayor's evidence on this inquiry was there any disclosure by him to the citizens or officials of the city of his relationship with Loblaws either as an employee or debtor.

The Calgary Trail, Loblaws transaction, Boulevard Heights, the Namao property, are all instances in which the Mayor was serving two masters at the same time. No disclosure of any of these transactions was made to his fellow

Commissioners, to the council, or to the citizens.

It perhaps would be well to make clear that while of necessity Commissioners Menzies and Tweddle were involved in all of these transactions which have been dealt with, there is nowhere an iota of evidence that would in any way reflect upon their integrity.

Having found these facts it is not the function of this Commission to pass judgment upon their legal consequences. It is sufficient to say that they raise very serious questions about the liability of the Mayor to account to the City of Edmonton for his gains in these transactions while he served the city as Mayor.

The obligations of an individual occupying a fiduciary capacity to those in whose behalf he is exercising that function has frequently been the subject of judicial inquiry and decision and the principles enunciated have been set forth. Reference is made to a decision in the House of Lords in Regal v. Gulliver which is reported in All England Reports (1942) Volume 1 at page 378, and quoting James, L.J.:

> " . . it appears to me very important that we should concur in laying down again and again the general principle that in this court no agent in the course of his agency, in the matter of his agency, can be allowed to make any profit without the knowledge of his principal; that the rules is an inflexible rule, and must be applied inexorably by this court, which is not entitled, in my judgment, to receive evidence, or suggestion, or argument, as to whether the principal did or did not suffer any injury in fact, by reason of the dealing of the agent; for the safety of mankind requires that no agent shall be able to put his principal to the danger of such an inquiry as that."

And again in the same judgment, Viscount Sankey:

> "The general rule of equity is that no one who has duties of a fiduciary nature to perform is allowed to enter into engagements in which he has or can have a personal interest conflicting with the interests of those whom he is bound to protect. If he holds any property so acquired as trustee, he is bound to account for it to his cestui que trust."

And again it has been said:

> "Whenever it can be shown that the trustee has so arranged matters as to obtain an advantage whether in money or money's worth to himself personally through the execution of his trust, he will not be permitted to retain, but be compelled to make it over to his constituent."

In the same case Lord Russell of Killowen makes it clear that

> "the principle in no case depends on fraud, or the absence of bona fides, or upon such questions or considerations as whether the profit would or should otherwise have gone to the plaintiff, or whether the profiteer was under a duty to obtain the source of the profit for the plaintiff, or whether he took a risk or acted as he did for the benefit of the plaintiff, or whether the plaintiff has in fact been damaged or benefited by his action. The liability arises from the mere fact of a profit having, in the stated circumstances, been made."

And Lord Eldon, as long ago as 1803 in Ex parte James, 32 E.R. 345, says:

> "The doctrine rests upon this, that the profit is not permitted in any case, however honest the circumstances. The general interests of justice require it to be destroyed in every instance; as no court is equal to the examination and ascertainment of the truth in much the greater number of cases."

This reasoning raises a presumption that cannot be challenged, just as pecuniary interest raises a presumption not open to challenge that a person exercising a judicial function is biased. As was stated by Vaughan Williams, Lord Justice, in Rex v. Sunderland Justices (1901) 2 K.B. 357 at 371:

> "If he (the justice) has personally a pecuniary interest or an interest capable of being measured pecuniarily, the law raises a conclusive presumption of bias. For reasons of policy, which hardly require explanation, it is not thought convenient, where there is such an interest, to go into the question whether he in fact acted partially or impartially. A bias is presumed from the mere fact of the existence of the interest."

Whether the office of mayor brings its occupant within the scope of these principles was considered by the Privy Council in a Canadian appeal in the case of Bowes v. City of Toronto, 14 E.R. 770. Lord Justice Bruce said of a councillor:

> "He may not have been an agent or trustee within the common meaning or popular acceptation of either term, but he was so substantially; he was so within the reach of every principle of civil jurisprudence, adopted for the purpose of securing, so far as possible, the fidelity of those who are entrusted with the power of acting in the affairs of others."

In the light of the foregoing facts and circumstances, the Commission recommends to the council of the City of Edmonton that it ought to consider the wisdom of securing the opinion of counsel upon the city's right to recover the Mayor's gains in the recited transactions.

CONCLUDING NOTES

A substantial number of complaints reached the Commission's counsel. Each was considered by counsel and the Commission. No evidence was taken with respect to any of these as they were regarded as being problems that could best be dealt with by the Commissioners or departmental heads. Each of these complaints will be referred to the appropriate city officer in the hope that a solution will be found.

At the request of the Commission, Mr. Tweddle, the city Commissioner, submitted a report covering statistically the growth and expansion of the City of Edmonton in area and population and the consequent burden of work on council and staff alike over the period of the last ten years. This was appropriate because it is only against the background of these times that the problems with which the Commission has to deal can be brought into their proper perspective in relation to the whole. This review is one which the interested citizens of Edmonton should secure and study. It records a period of remarkable growth and progress of which every citizen can be proud. It is not until one sees such a statement that the magnitude of the administration of the affairs of this city becomes apparent.

The accomplishments are an outstanding tribute to the talent and effort of the Mayor and Commissioners.

This inquiry appears to have resulted from complaints made by petitioners to the City of Edmonton who were represented in these proceedings by Mr. Frank R. Dunne. In the course of the proceedings, Mr. Dunne's clients applied to the city for financial aid in paying Mr. Dunne's fees. Council addressed a letter to the Commissioner asking that some recommendation be made by the Commission to council. While the Commission is of opinion that it would not be proper for it to make any direction about the wisdom of council complying with the petitioners' request, there can be no doubt that the work of the Commission could not have proceeded, let alone have been accomplished, without the very excellent assistance that the Commission received from Mr. Dunne and from numbers of his clients. It is clear that a service has been rendered by the petitioners to the City of Edmonton and a substantial saving to the city has been made in the expense that might otherwise have been incurred to get the same result.

All of those whose affairs were under investigation came forward voluntarily and frankly and fully disclosed all the relevant facts and documents.

Mr. K. J. Morrison, C.A., of Calgary, was retained by the Commission to examine the relevant financial records of the various persons and companies whose affairs were reviewed by the Commission. His work greatly facilitated the work of the Commission and materially shortened the time that would otherwise have been involved in getting at the facts which he found.

The Commission is indebted to the officials of the City of Edmonton for the mass of material which they made available. This facilitated an understanding of the problems by the Commission and was of the greatest assistance to counsel for all concerned.

The Commission is grateful to counsel for their co-operation and to the court reporters for the provision of a daily transcript which facilitated the work of all concerned. The Commission also thanks W. F. Ellis for his assistance as Clerk to the Commission.

The Commission wishes to thank its Counsel, Mr. W. G. Morrow, for the great assistance he gave in testing the evidence led and helping the Commission in its efforts to ascertain the truth. Thanks are also due to Mr. W.A. Stevenson and Mr. R. A. Dunlop for their untiring efforts to expose and explain for the Commissioner's consideration the maze of statutes, by-laws, regulations and rulings that had to be examined in considering the problems assigned to the Commission by the terms of reference.

M. Porter

MARSHALL M. PORTER,
Commissioner.

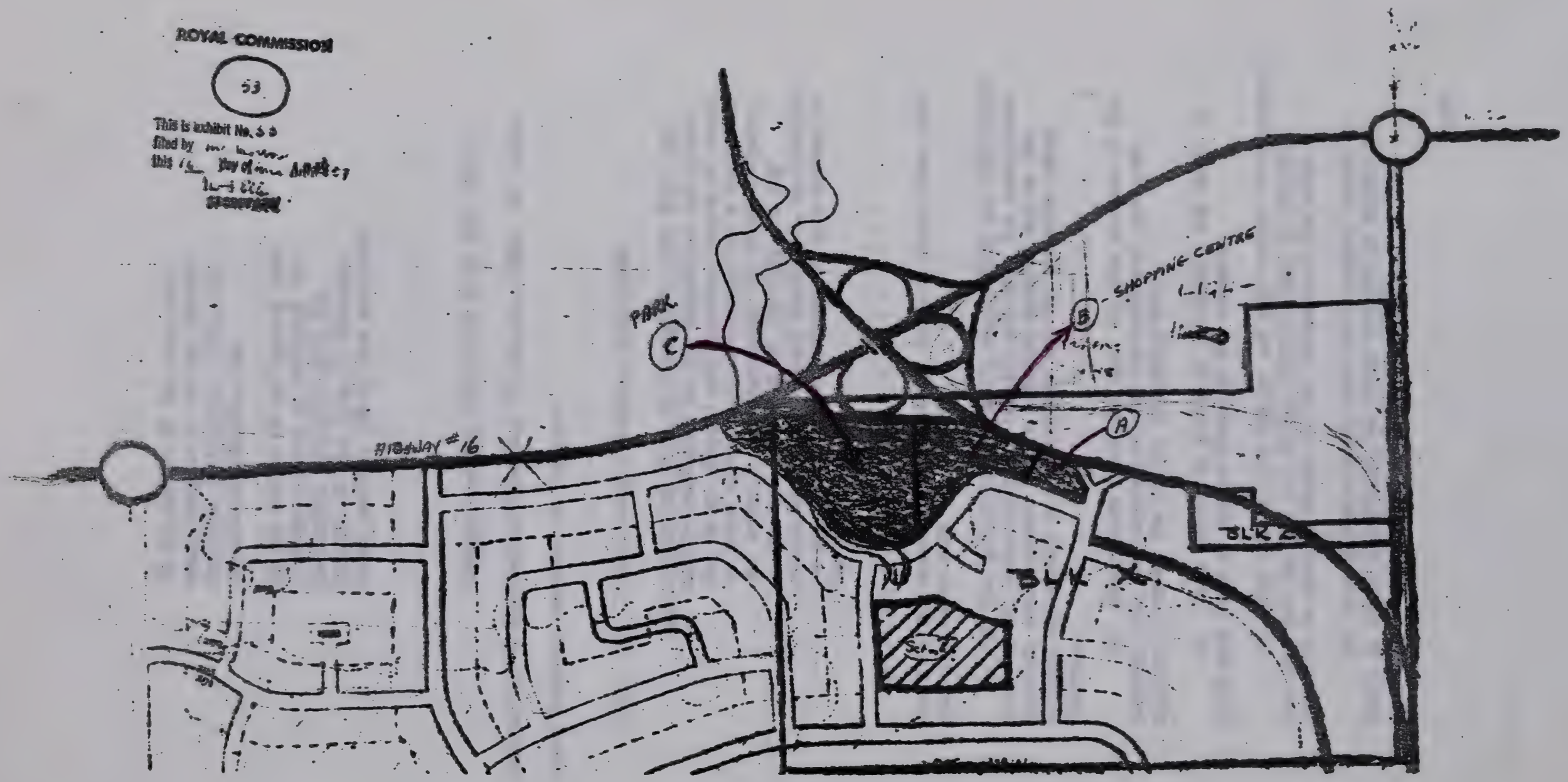
The following Counsel took part in the proceedings:

W. G. Morrow, Q.C.	Commission Counsel
K. A. McKenzie, Q.C.	City of Edmonton
A. F. Macdonald, Q.C.	City of Edmonton
A. W. Miller, Q.C.	City of Edmonton
A. F. Moir, Esq.	Mayor W. Hawrelak
G. A. C. Steer, Esq.	Mayor W. Hawrelak
D. M. Cormie, Esq.	Dominion Stores
J. W. Kennedy, Esq.	Dominion Stores
W. A. Johnson, Esq.	Norman Rault
J. C. Cavanagh, Esq.	Alex Lakusta
J. T. Joyce, Esq.	F. X. Frederickson
H. R. Johnson, Esq.	Bertha Boyko
F. Pawlowski, Esq.	Ostap Lech
M. I. Friedman, Q.C.	Paul Shandro
R. A. MacKimmie, Q.C.	Loblaws

ROYAL COMMISSION

53

This is exhibit No. 53
filed by
this day of
REGISTRAR



IN THE MATTER OF The City Act,
being Chapter 42 of the Revised
Statutes of Alberta, 1955, and
amendments thereto, and

IN THE MATTER OF an Inquiry into
certain matters as outlined in a
Resolution received from the
Council of the City of Edmonton
under section 728 of the said Act.

WHEREAS section 728 of The City Act, being chapter 42 of the Revised Statutes of Alberta, 1955, and amendments thereto, provides as follows:

"728. (1) If the council passes a resolution

(a) requesting that an inquiry be made into any matter mentioned in the resolution and relating to an alleged malfeasance, breach of trust or other misconduct on the part of a member of the council, a commissioner or other official, an employee or agent of the city, or any person having a contract therewith, in relation to the duties or obligations of such person to the city, or

. . . . . .

the Attorney General may appoint a judge or some other suitable person to make the inquiry.

(2) The person so appointed shall, with all convenient promptitude, enter upon the inquiry and upon the conclusion thereof, shall report to the Attorney General and to the council the result of the inquiry and the evidence taken thereon.

(3) The person appointed has, for the purpose of the inquiry, all the powers that may be conferred upon commissioners under The Public Inquiries Act.

(4) Such person is entitled to receive and shall be paid such fees as may be fixed by the council.

(5) The council may engage and pay counsel to represent the city and may pay all proper witness fees to persons summoned to give evidence at the instance of the city.

(6) Any person charged with malfeasance, breach of trust or other misconduct, or whose conduct is called in question, may be represented by counsel.";

and

WHEREAS at a meeting of the Council of the City of Edmonton held on the 12th day of January, A.D., 1959, the following Resolution was passed:

> "Pursuant to Section 728 of the City Act, Council does now resolve that the Attorney General of Alberta be requested to appoint a Judge to inquire at the earliest possible date concerning the matters enumerated in the report to the Edmonton City Council, dated January 12th, 1959, as submitted by the Special Investigating Committee appointed by City Council pursuant to Section 730 of the City Act on December 8th, 1958.";

and

WHEREAS the matters enumerated in the report to the Edmonton City Council dated the 12th day of January, A.D., 1959, as submitted by the Special Investigating Committee appointed by City Council pursuant to section 730 of The City Act are as follows:

(a) That certain employees and officials of the City of Edmonton have accepted or solicited bribes in the course of their employment and in connection with the discharge of their duties as employees and officials of the City of Edmonton.

(b) That there has been improper policy, administration and handling of lands owned by the City of Edmonton and the sale and purchase of said lands, in support of which the following examples are cited:

(1) Lots 274, 275, Block 9, Plan 1558 K.S.

(2) The Hannigan property, Lot 12, Block 38, Plan 4128 H.W.

(3) Lots 32 to 39 sold to Glenora Tennis Club.

(4) Lots 1 to 7, Lots 18, 19 and 20, Block 5, Plan 5435 V. purchased by the City.

(5) Lot 6, Block B, Plan 1641 E.T.

(6) Lot A, Block B, Plan 4051 K.S.

(7) Parcel 1, Block X, Boulevard Heights, Plan 6903 A.P. (annexation) or parts thereof.

(c) The improper handling and administration of town planning.

(d) Excessive cost and improper purchasing, leasing and rentals of equipment and material by the City of Edmonton.

NOW THEREFORE I, Ernest Manning, Attorney General of the Province of Alberta, pursuant to the said section 728 of The City Act do hereby appoint the HONOURABLE MR. JUSTICE MARSHALL MENZIES PORTER, a Justice of the Supreme Court of the Province of Alberta, to make an inquiry into and concerning the matters referred to in the aforesaid report to the Edmonton City Council as follows:

(a) That certain employees and officials of the City of Edmonton have accepted or solicited bribes in the course of their employment and in connection with the discharge of their duties as employees and officials of the City of Edmonton.

(b) That there has been improper policy, administration and handling of lands owned by the City of Edmonton and the sale and purchase of said lands, in support of which the following examples are cited:

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(c) The improper handling and administration of town planning.

(d) Excessive cost and improper purchasing, leasing and rentals of equipment and material by the City of Edmonton.

and on the conclusion of the inquiry to report to the Attorney

General and the Council of the City of Edmonton the result of the inquiry and the evidence taken thereon.

DATED at the City of Edmonton, in the Province of Alberta, this 16th day of January, A.D., 1959.

ATTORNEY GENERAL OF THE
PROVINCE OF ALBERTA

Author

Alberta. Inquiry into Certain Matters...Council of the City of Edmonton.

Title

Report.

Oct 7/74